

Appendix B contains the following documents in order for CBNMS, GFNMS and MBNMS:

- Proposed Rule
- Strike-through version of regulations with proposed changes
- Strike-through version of designation document changes

All federal agencies intending to make regulatory changes are required by the Administrative Procedures Act (APA) to publish a “proposed rule” in the *Federal Register*. This is to ensure that affected agencies and members of the public are provided notice as to what is being proposed and are given an opportunity to comment on the proposed (or draft) rule before it becomes final. The proposed rule describes the proposed regulatory and designation document changes, provides new regulatory language for the proposed rule and designation document, and indicates when public hearings will be held and the duration of the public comment period.

The NMSP is also providing a strike-through version of the regulations and designation document to help the readers understand and visually see the specific changes that are being proposed for each sanctuary. Deleted text is indicated in strike-through and added text is indicated by underline.

APPENDIX B

DESIGNATION DOCUMENT AND REGULATION CHANGES

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**CORDELL BANK NMS
PROPOSED RULE**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No.

RIN 0648-AT16

Cordell Bank National Marine Sanctuary Regulations

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of public availability of draft management plan/draft environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan and revised regulations for Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary). The proposed set of regulations includes new regulations as well as changes to existing regulations. Proposed new regulations include prohibitions on: discharging or depositing from within or into the Sanctuary any material or matter from a cruise ship; drilling, dredging or otherwise altering the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank except incidental and necessary to lawful use of any fishing gear during normal fishing operations; drilling, dredging or otherwise altering the submerged lands beyond the line representing the 50-fathom isobath surrounding the Bank except for anchoring and normal fishing operations; taking or possessing marine mammals, birds and sea turtles within the Sanctuary; and releasing introduced species into the Sanctuary. The revised regulations would also clarify: the coordinates and description of the Sanctuary's boundary; that the Sanctuary includes the submerged lands within its boundary; the exceptions for the prohibition on discharging or depositing materials and matter into the Sanctuary; and permit issuance criteria and procedures. Finally, the revised regulations would revise the exception for normal fishing operations in regards to the taking of benthic invertebrates and algae to read "except incidental and necessary to lawful use of any fishing gear;" and would prohibit discharging or depositing into the Sanctuary food waste resulting from meals on board vessels.

The NMSP is also proposing certain revisions to the Sanctuary's Designation Document. Proposed revisions of the Description of the Sanctuary would: clarify that the submerged lands at CBNMS are legally part of the Sanctuary and are included in the boundary description, and express boundary coordinates based on the North American Datum of 1983. Proposed changes to the Scope of Regulations would authorize Sanctuary regulation of: activities regarding cultural or historic resources; placing or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary; taking or possessing any marine mammal, sea turtle, or bird; introducing or otherwise releasing from within or into the Sanctuary an introduced species; and drilling into, dredging, altering, or constructing on the submerged lands. Additional proposed changes to the Designation Document would provide: an updated and more complete description of characteristics that give the Sanctuary particular value; an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; and various minor revisions in order to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries. In Article V (Relation to Other Regulatory Programs), the "Fishing" section is

being revised to clarify the original intent that, although the Sanctuary does not have authority to regulate fishing, fishing vessels may be regulated with respect to discharge and anchoring in accordance with Article IV. No changes are proposed to be made to the “Defense Activities” section of the Designation Document.

DATES:

Public hearings will be held as detailed in the SUPPLEMENTARY INFORMATION section.

Comments will be considered if received by [INSERT 90 DAYS FROM PUBLICATION DATE IN THE FEDERAL REGISTER], 2006.

ADDRESSES: Written comments should be sent by mail to Brady Phillips, JMPR Management Plan Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by e-mail to jointplancomments@noaa.gov, or by fax to (301) 713-0404. Copies of the DMP/DEIS are available from the same address and on the web at www.sanctuaries.nos.noaa.gov/jointplan. Comments can also be submitted to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Bizot, National Permit Coordinator, National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, Maryland 20910, by e-mail to David.Bizot@noaa.gov, or by fax to 301-713-0404; and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Dan Howard at (415) 663-0314, Extension 102 or Dan.Howard@noaa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 (e)), the National Marine Sanctuary Program (NMSP) has completed its review of the management plan for Cordell Bank National Marine Sanctuary (CBNMS or Sanctuary), located off the coast of northern California. The review has resulted in a proposed new management plan for the Sanctuary, several proposed revisions to existing regulations and several proposed new regulations. The proposed new regulations include prohibitions on:

- discharging or depositing from within or into the Sanctuary any material or matter from a cruise ship, except vessel engine cooling water;
- drilling, dredging or otherwise altering the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank, except incidental and necessary to lawful use of any fishing gear during normal fishing operations;
- drilling, dredging or otherwise altering the submerged lands beyond the line representing the 50-fathom isobath surrounding the Bank, except for anchoring a vessel or as incidental and necessary to lawful use of any fishing gear during normal fishing operations;
- taking or possessing marine mammals, birds and sea turtles, except as authorized by the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*), and any regulations, as amended, promulgated under these acts; and
- introducing or otherwise releasing from within or into the Sanctuary an introduced species except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

These measures would afford better protection to the nationally significant natural resources at CBNMS.

Existing regulations would also be revised to:

- clarify that the Sanctuary includes the submerged lands within the Sanctuary boundary;
- correct inaccuracies in the coordinates and description of the Sanctuary's boundary;
- clarify that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that all vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to lawful fishing activities within the Sanctuary;
- remove an exception for discharging or depositing food waste resulting from meals on board vessels;
- revise language for discharging and depositing from beyond the boundary of the Sanctuary.

The permit regulations for the Sanctuary are also being revised and clarified. The modified permit regulations would specify that the Director may only issue permits for specific activities that would otherwise violate certain prohibitions: discharging and depositing; altering the submerged lands; abandoning structures, material or other matter on the submerged lands; taking any marine mammal, sea turtle or bird within or above the Sanctuary; possessing within the Sanctuary (regardless of from where taken, moved, or removed) any marine mammal, sea turtle, or bird; and taking benthic invertebrates or algae within the line representing the 50 fathom isobath surrounding the Bank except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations. In deciding whether to issue a permit, the Director of the NMSP shall consider such factors as: duration; effects on Sanctuary resources and qualities; potential indirect, secondary, or cumulative effects; and whether it is necessary to conduct the activity in the Sanctuary. In addition, the proposed modifications to the permit procedures and criteria (15 CFR 922.113) would further refine current requirements and procedures found in the general NMSP regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB approval number 0648-0414). The revised section would add language to the CBNMS permit regulations about procedures and criteria for permit renewal. The proposed modifications to the permit regulations would also expressly require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

The proposed revised management plan for the Sanctuary contains a series of action plans that outline administrative management, research, education, partnerships, ecosystem management, operational and performance measurement activities that are planned for the next five years. The activities are designed to address specific issues facing the Sanctuary and in doing so, help achieve the mandates of the NMSP and the Sanctuary's designation.

This document publishes the proposed new regulations and the proposed changes to existing regulations, publishes the text of the proposed Revised Designation Document for the Sanctuary, and announces the availability of the draft management plan and the draft environmental impact statement (DMP/DEIS). The existing CBNMS Designation Document was published at the time of Sanctuary designation in 1989 and, pursuant to the NMSA (at 16 U.S.C. 1434 (a)(4)), describes the geographic area included within the Sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that are subject to regulation by the Secretary to protect those characteristics. The NMSP is proposing certain revisions to the Sanctuary's Designation Document, which include changes to the description of the area, an updated and more complete description of characteristics that give the

Sanctuary particular value, an updated explanation of the relation to other regulatory programs, and a number of substantive changes to the Sanctuary's scope of regulations.

Since designation, the area of CBNMS has been described as approximately 397 square nautical miles (nmi). However, as a result of the proposed regulation changes that correct inaccuracies and ambiguities in the coordinates and the description of the Sanctuary's outer and shoreline boundaries, the CBNMS area is now calculated as approximately 399 square nmi. The legal description of CBNMS is proposed to be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

Because this proposed action includes changes to the terms of designation of the Sanctuary, as defined at 16 U.S.C. 1434(a)(4), a DEIS has been developed in accordance with 16 U.S.C. 1434(a)(2) and the National Environmental Policy Act of 1969.

Sanctuary Environment

PHYSICAL SETTING

Location

CBNMS was designated in 1989 and protects an area of 526 square miles (399 square nautical miles) off the northern California coast. The main feature of the Sanctuary is Cordell Bank, an offshore granite bank located on the edge of the continental shelf, about 43 nautical miles (nmi) northwest of the Golden Gate Bridge and 20 nmi west of the Point Reyes lighthouse. CBNMS is entirely offshore and shares its southern and eastern boundary with the Gulf of the Farallones National Marine Sanctuary. The CBNMS eastern boundary is six miles from shore and the western boundary is the 1000 fathom isobath on the edge of the continental slope.

CBNMS is located in one of the world's four major coastal upwelling systems. The combination of oceanic conditions and undersea topography provides for a highly productive environment in a discrete, well-defined area. The vertical relief and hard substrate of the Bank provide benthic habitat with near-shore characteristics in an open ocean environment 20 nmi from shore.

Geology

Two distinctive geologic features characterize the geology of CBNMS: the shallow granitic Cordell Bank and the surrounding soft bottom of the continental shelf and slope.

Cordell Bank is composed of a granite block that was created as part of the southern Sierra Nevada range some 93 million years ago. The Bank is one of the few offshore areas where the granite block emerges from the newer sediments that make up most of the continental shelf. The Bank itself is about 4.5 miles wide by 9.5 miles long. The bottom of the Bank slopes gently from depths of 300 to 400 feet (91 -122 meters). Jagged ridges and pinnacles rise abruptly from this plain and reach up 140 to 120 feet (43 to 37 meters) below the sea surface. In many places, the sides of the ridges and pinnacles are extremely steep, often with slopes greater than 80 degrees. Six nmi to the west of the Bank, along the sanctuary boundary, the continental slope drops steeply to 6,000 feet and more.

The ocean bottom around the Bank and within the sanctuary contains few distinguishing features and is chiefly composed of mud and sand deposits. Deposits of undifferentiated mud and sand extend in a plume to the south and a fan to the east of Cordell Bank. To the northern and western boundaries, along the Farallon escarpment, the continental shelf is made up entirely of fine sand deposits. The complexity of the underwater topography and sediment distribution increases near the coast within the Gulf of the Farallones National Marine Sanctuary.

Climate and Oceanography

The calendar year at Cordell Bank can be broken into three oceanographic seasons: upwelling season, relaxation season, and winter storm season. The upwelling season typically begins with the spring transition, characterized by strong persistent winds from the northwest. This usually occurs sometime in late February or early March, and is the start of the annual productivity cycle along northern and central California. During this season, upwelling driven by winds from the northwest alternate with periods of calm. These winds generally begin to subside by late July. August through mid-November is the relaxation season. During this time, winds are mostly light and variable, and the seas can be calm for a week or two at a time. This changes abruptly with the arrival of the first winter storms from the Gulf of Alaska. From late November through early February, winter storms create large waves and strong winds along the coast. Ocean conditions can be treacherous all year, but especially during winter storms.

BIOLOGICAL SETTING/ LIVING MARINE RESOURCES

Marine Birds

The waters around Cordell Bank provide critical foraging habitat for many species of seabirds. Seabird density over Cordell Bank can be among the highest of any area in central and northern California. Fifty-nine seabird species have been identified feeding in or near the sanctuary. The composition of seabirds found at Cordell Bank is a mix of local breeding birds and highly migratory, open-ocean species. While the local representatives use the nearby Farallon Islands and Point Reyes areas to nest, some migrants nest thousands of miles away. A recent study using radio tags documented that black-footed albatross nesting in the Northwestern Hawaiian Islands were “commuting” to Cordell Bank waters to forage before returning to feed chicks on their nests on Midway Atoll.

Other migratory species use the productive waters around the Bank as a stopover on their annual migration route. Hundreds of thousands of sooty shearwaters can be seen on days when they are migrating through the sanctuary. Sanctuary waters are equally important to local breeders. Most of the world’s remaining population of ash storm-petrels, which nest on Southeast Farallon Island, can be seen on the water near the Bank. More than 20,000 Cassin’s auklets have been counted in a single day.

Some common sanctuary species include the black-footed albatross, northern fulmar, sooty shearwater, storm-petrels, Cassin’s auklet, rhinoceros auklet, phalaropes, and many species of gulls.

Marine Mammals

Twenty-six species of marine mammals (a combination of resident and migratory species) have been observed within the sanctuary. Gray whales, for example, pass the Bank on their annual migrations between Arctic feeding grounds and Mexican breeding areas.

The Dall’s porpoise is one of the most frequently sighted marine mammals in the sanctuary, along with humpback and blue whales. Individuals of all species use the sanctuary as a destination feeding ground. Large numbers of the eastern Pacific humpback whales and blue whales feed during the summer months within the Cordell Bank-Bodega Canyon area.

The harbor porpoise, a species widely distributed in coastal waters but rarely seen offshore, is regularly observed within the sanctuary’s shallow areas. Pacific white-sided dolphins and northern right whale dolphins are abundant. Other cetaceans observed in the Sanctuary include Risso’s dolphins and killer whales.

The California sea lion, the most abundant pinniped in California waters, has been observed in CBNMS more frequently and in greater numbers than other pinnipeds. The northern fur seal is also abundant in the area in late fall and winter (most of them use summer breeding grounds in the

Channel Islands). Stellar sea lions have decreased drastically in California in recent years, but Cordell Bank remains a feeding area for this species, possibly because of the abundance of rockfish and sardines around the Bank. Nearby rookeries include Año Nuevo Islands and the Farallon Islands. The sea lions' winter haul-out grounds include Point Reyes and offshore rocks along the Sonoma County coast.

Fish Resources

More than 180 species of fish have been identified in the CBNMS. Many species of rockfish (*Sebastes* sp.) can be found at all depths and habitats on and around the bank. The bank provides critically important habitat for young of the year, juvenile, and adult rockfishes. Lingcod are especially numerous in the wintertime, when they move up onto the bank to spawn. Many species of flatfish use the soft-bottom habitat around the bank, and albacore tuna and salmon frequent the sanctuary on a seasonal basis. Albacore and salmon both feed on lanternfish, which migrate nightly into shallow surface layers from deeper daytime haunts. The recovery of Pacific sardine populations is apparent in the waters surrounding Cordell Bank.

Benthic Organisms

An abundant cover of benthic organisms can be seen on the upper rock surfaces of Cordell Bank. The high light penetration allows for algal photosynthesis far deeper than in nearshore coastal waters. The constant food supply washing the bank combined with a hard substrate for attachment provide ideal conditions that support a rich assemblage of benthic invertebrates. Space is the limiting factor on the upper pinnacles and ridges of Cordell Bank. Ridges are thickly covered with sponges, anemones, hydrocorals, hydroids, and tunicates, and scattered crabs, holothurians, and gastropods. In some places, the invertebrate cover is up to one foot thick and very brightly colored, mainly in white, pink, yellow, and red.

Proposed Revised Designation Document

NOAA is proposing to specify in the Designation Document that the submerged lands at CBNMS are legally part of the Sanctuary and are included in the boundary description. At the time the Sanctuary was designated in 1989, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the National Marine Sanctuaries Act) characterized national marine sanctuaries as consisting of coastal, marine and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98-498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, to be consistent with the NMSA, NOAA is updating the Designation Document and the boundary description, by adding "submerged lands thereunder" to the term "marine waters." Additionally, boundary coordinates in the revised Designation Document and in the Sanctuary regulations will be expressed by coordinates based on the North American Datum of 1983 (NAD 83).

Proposed changes to the Scope of Regulations would authorize Sanctuary regulation of: activities regarding cultural or historic resources; placing or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary; taking or possessing any marine mammal, sea turtle, or bird; introducing or otherwise releasing an introduced species from within or into the Sanctuary; and drilling into, dredging, altering, or constructing on the submerged lands. Additional proposed changes to the Designation Document would provide: an updated and more complete description of characteristics that give the Sanctuary particular value; an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; and various minor revisions in order to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries.

In Article V (Relation to Other Regulatory Programs), the “Fishing” section is being revised to clarify the original intent that, although the Sanctuary does not have authority to regulate fishing, fishing vessels may be regulated with respect to discharge and anchoring in accordance with Article IV. No changes are proposed to be made to the “Defense Activities” section of the Designation Document.

The NMSP has carefully considered existing state and federal authorities in proposing new regulatory authorities to ensure protection and management of sanctuary resources. Proposed new authorities are intended to complement existing authorities.

Proposed Revised Designation Document for Cordell Bank National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (the “Act”), the Cordell Bank and its surrounding waters offshore northern California, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the ecological, research, educational, aesthetic, historical, and recreational resources therein.

Article I. Effect of Designation

Cordell Bank National Marine Sanctuary (the Sanctuary) was designated on May 24, 1989 (54 FR 22417). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.* (NMSA), authorizes the issuance of such regulations as may be necessary to implement the designation, including managing, protecting and conserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of the Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of a 399 square nautical mile area of marine waters and the submerged lands thereunder encompassed by a boundary extending approximately 250° from the northernmost boundary of Gulf of the Farallones National Marine Sanctuary (GFNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the GFNMS boundary and back to the northeast along this boundary to the beginning point. The precise boundaries are set forth in the regulations.

Article III. Characteristics of the Area that Give it Particular Value

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank and its surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300 to 400 feet (91 to 122 meters) deep and ascends to within about 140 to 120 feet (42 to 37 meters) of the surface. The seasonal upwelling of nutrient-rich bottom waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank includes an exceptional assortment of algae, invertebrates, fishes, marine mammals and seabirds.

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or within the line representing the 50 fathom isobath surrounding the Bank;
- c. Hydrocarbon (oil and gas) activities within the Sanctuary;
- d. Anchoring on the Bank or within the line representing the 50 fathom isobath surrounding the Bank;
- e. Activities regarding cultural or historical resources;
- f. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- g. Taking or possessing any marine mammal, marine reptile, or bird except as permitted under the Marine Mammal Protection Act, Endangered Species Act or Migratory Bird Treaty Act; and
- h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species.

Section 2. Consistency with International Law

The regulations governing activities listed in Section 1 of this Article shall apply to foreign flag vessels and foreign persons only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3. Emergency Regulations

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in Section 1 of this Article, are subject to immediate temporary regulation, including prohibition, within the limits of the Act on an emergency basis for a period not to exceed 120 days.

Article V. Relation to Other Regulatory Programs

Section 1. Fishing

The regulation of fishing is not authorized under Article IV. All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C 1801 *et seq.* ("Magnuson-Stevens Act"), shall remain in effect. All permits, licenses, approvals, and other authorizations issued pursuant to the Magnuson-Stevens Act shall be valid within the Sanctuary. However, all fishing vessels are subject to regulation under Article IV with respect to discharges and anchoring.

Section 2. Defense Activities

The regulation of activities listed in Article IV shall not prohibit any Department of Defense (DOD) activities that are necessary for national defense. All such activities being carried out by DOD within the Sanctuary on the effective date of designation shall be exempt from any prohibitions contained in the Sanctuary regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, shall be subject to all prohibitions contained in the Sanctuary regulations.

Section 3. Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued pursuant to those programs shall be valid, subject only to the regulation of activities pursuant to Article IV.

Article VI. Alterations to This Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.

[END OF DESIGNATION DOCUMENT]

Summary of the Proposed Regulatory Amendment

The proposed regulatory changes would clarify that “submerged lands” are within the Sanctuary boundary, i.e., part of the Sanctuary. This would update the boundary to make it consistent with the NMSA and the revised Designation Document. (See explanation of boundary clarification in preceding discussion of proposed revised Designation Document.) Technical corrections would be made to the Sanctuary boundary and the boundary coordinates would be based on the North American Datum of 1983. Since designation, the area of CBNMS has been described as approximately 397 square nautical miles. However, adjusting for technical corrections and using updated technologies, the CBNMS area is now more accurately described as approximately 399 square nautical miles. The legal description of CBNMS would be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

The proposed regulations would also clarify and otherwise modify the existing (1989) regulation prohibiting discharging or depositing any material or other matter. Clarifications would be made to make it clear that the regulation applies to discharges and deposits “from within or into the Sanctuary” (“into” is intended to make clear that the prohibition would apply not only to discharges and deposits originating in the Sanctuary (e.g., from vessels in the Sanctuary), but also, for example, from discharges and deposits above the Sanctuary, such as from aircraft). The exception for fish, fish parts, or chumming materials (bait) is clarified so that it applies only to such discharges or deposits made during the conduct of lawful fishing activity within the Sanctuary. The exception for biodegradable effluent discharges from marine sanitation devices is clarified to apply only to operable Type I or II marine sanitation devices approved by the United States Coast Guard in accordance with the Federal Water Pollution Control Act, as amended. Although the existing exception for vessel wastes “generated by marine sanitation devices” was intended to prohibit the discharge of untreated sewage into the Sanctuary, the proposed change would clarify that such discharges are only allowed if generated by Type I or II marine sanitation devices. Type I and Type II marine sanitation devices treat wastes, but Type III marine sanitation devices store waste until it is removed at designated pump-out stations on shore or discharged at sea.

The discharge and deposit regulation would be modified by removing the exception for discharging or depositing food waste resulting from meals onboard vessels. Coast Guard regulations prohibit discharge of food wastes (garbage) within three nmi and prohibit discharge of food wastes unless ground to less than one inch within three to twelve nmi. The proposed Sanctuary regulation modification would provide increased protection to Sanctuary resources and qualities from such marine debris vis-à-vis the Coast Guard regulations in the area of the Sanctuary beyond three nmi.

No other changes are being made to the exceptions that allow discharge of water (including vessel cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by routine vessel maintenance (e.g., deck wash down) and engine exhaust. These exceptions do not include and, therefore, it continues to be prohibited to discharge, ballast water or oily wastes resulting from bilge pumping. Ballast water is a known vector for introduced species and other contaminants from the source area. The discharge of oily wastes from bilge pumping is interpreted here to mean any waste that produces a visible sheen. The proposed clarifications and modifications are intended to achieve increased protection of Sanctuary resources and qualities. The proposed clarifications and modification are intended to achieve increased protection of Sanctuary resources and qualities.

The proposed exceptions to the revised discharge and deposit regulation would also restrict cruise ships to discharging only vessel cooling water into the Sanctuary. “Cruise ship” is defined to mean: a vessel with 250 or more passenger berths for hire. The prohibition would protect Sanctuary water quality from the potentially large volume of wastewater that may be discharged by cruise ships, while allowing for them to transit the Sanctuary. Currently 643,000 cruise ship passengers embark annually from California ports in San Francisco Bay, Los Angeles, and San Diego. Ninety cruise ship arrivals and departures (Metropolitan Stevedore Company) are estimated at the San Francisco Passenger Terminal in 2006. Many of these cruise ships will be entering and exiting the Bay through the south bound vessel traffic lanes which do not transit the Sanctuary, but are adjacent to the Sanctuary. Although partly constrained by the lack of local docking facilities, cruise ship visits are likely to continue to increase as the fleet shifts from international to domestic cruises and begins using a new cruise ship docking facility planned for San Francisco Bay. Due to their sheer size and passenger capacity, cruise ships can cause serious impacts to the marine environment. The main pollutants generated by a cruise ship are: sewage, also referred to as black water; gray water (shower, sink, and dishwashing water); oily bilge water; hazardous wastes; and solid wastes. Based on EPA estimates, in one week a 3000-passenger cruise ship generates about 210,000 gallons of sewage, 1,000,000 gallons of gray water, 37,000 gallons of oily bilge water, more than 8 tons of solid waste, millions of gallons of ballast water containing potential invasive species, and toxic wastes from dry cleaning and photo-processing laboratories. Although cruise ships discharge waste from a single source, they are exempt from regulation under the Clean Water Act (CWA) point source permitting system. The CWA allows the discharge of untreated black water anywhere beyond three miles from shore, and does not require any treatment of gray water.

Finally, the discharging or depositing of any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality would be modified to conform its phrasing to other more recently designated sanctuaries' regulatory language. The proposed revision would not change the substance of the regulation.

The proposed regulatory changes would also include a new regulation prohibiting drilling into, dredging or otherwise altering Cordell Bank or the submerged lands on or within the line representing the 50-fathom isobath of the Bank except as incidental and necessary to lawful use of any fishing gear during normal fishing operations. This part of the proposed regulation would ensure the prominent geological features of the Bank, such as the pinnacles and ridges, are protected from permanent destruction from activities such as anchoring or exploratory activity. Another concern has been bottom-contact fishing gear. At present this gear type is regulated to protect the bottom habitat under 50 CFR Part 660. This proposed regulation would also add specificity to the types of submerged lands alteration not allowed by including “abandoning” structures, materials, or other matters as a prohibition. This change will help protect the Sanctuary from unwanted debris (such as wrecked vessels or seabed research equipment) abandoned by Sanctuary visitors.

The proposed regulatory changes would also include a new regulation prohibiting drilling into, dredging or otherwise altering the submerged lands within the balance of the Sanctuary, beyond the line representing the 50-fathom isobath surrounding the Bank, except as incidental and necessary to anchoring and to lawful use of any fishing gear during normal fishing operations. This proposed regulation would also add specificity to the types of submerged lands alteration not allowed by including “abandoning” structures, materials, or other matters as a prohibition. This change will help protect the Sanctuary from unwanted debris (such as wrecked vessels or seabed research equipment and fishing traps). This proposed regulation would add protection to the shallow sand and mud deposits that make up the surrounding soft bottom of the continental shelf and slope, important habitats that provide support for the living resources of the Sanctuary.

The proposed regulatory changes would also include a new prohibition on take of marine mammals, birds, and sea turtles, except as expressly authorized by the Marine Mammal Protection Act, as amended, (16 U.S.C. 1361 et seq.), Endangered Species Act, as amended, (16 U.S.C. 1531 et seq.), Migratory Bird Treaty Act, as amended, (16 U.S.C. 703 et seq.), or any regulation promulgated under one of these acts. The intent of this regulation is to bring a special focus to protection of the diverse and vital marine mammal and bird populations and the sea turtles of the Sanctuary. This area-specific focus is complementary to other resource protection agencies, especially given that other federal and state authorities must spread limited resources over much wider geographic areas. This regulation would be consistent with regulations at several other more recently designated national marine sanctuaries, and would provide additional deterrence per the civil penalties afforded under the NMSA. Further, the prohibition would cover all marine mammals, sea turtles, and birds within or above the Sanctuary. The Sanctuary’s proposed regulation would not apply if an activity (including a federally or state-approved fishery) that does or might cause take of marine mammals, birds or sea turtles has been authorized to do so under the MMPA, ESA, or MBTA or an implementing regulation. With this proposed regulation, if National Marine Fisheries Service (NMFS) or the United States Fish and Wildlife Service (USFWS) issues a permit for the take of a marine mammal, bird, or sea turtle, the permitted activity would be allowed under NMSP regulations and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary regulation. “Take” is defined in the NMSP program-wide regulations at 15 CFR 922.3.

The proposed regulatory changes would also prohibit possessing within the Sanctuary (regardless of where taken, moved, or removed from) any marine mammal, sea turtle, or bird, except as expressly authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA. This proposed regulation would serve to provide a greater deterrent for violations of existing laws protecting marine mammals, birds, and sea turtles than that offered by those other laws alone. This proposed regulation would also be consistent with recent regulations adopted by other national marine sanctuaries and would enhance protection provided by the prohibition on take of marine mammals, seabirds, and sea turtles (see above). With this proposed regulation, if NMFS or the USFWS issues a permit for the possession of a marine mammal, bird, or sea turtle, the permitted activity would be allowed under NMSP regulations and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary regulation.

The proposed regulatory changes would prohibit introducing or otherwise releasing from within or into the Sanctuary an introduced species except striped bass (*Morone saxatilis*) released during catch and release fishing activity. “Introduced species” is defined to mean: (1) a species (including any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes. The prohibition would not apply to the release of striped bass (*Morone saxatilis*) during catch and release fishing activity. Striped bass were intentionally introduced in California in 1879, and in 1980 the California

Department of Fish and Game initiated a striped bass hatchery program to support the striped bass sport fishery, which according to the California Department of Fish and Game is one of the most important fisheries on the Pacific Coast. The California Department of Fish and Game manages the striped bass fishery through a Striped Bass Management Conservation Plan. This prohibition is designed to help reduce the risk from introduced species, including their seeds, eggs, spores, and other biological material capable of propagating. The intent of the prohibition is to prevent injury to Sanctuary resources and qualities, to protect the biodiversity of the Sanctuary ecosystems, and to preserve the native functional aspects of the Sanctuary ecosystems, which are put at risk by introduced species. Introduced species may become a new form of predator, competitor, disturber, parasite, or disease that can have devastating effects upon ecosystems. For example, introduced species impacts on native coastal marine species of the Sanctuary could include: replacement of a functionally similar native species through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated species; increased intra- or interspecies competition with native species; creation or alteration of original substrate and habitat; hybridization with native species; and direct or indirect toxicity (e.g., toxic diatoms). Changes in species interactions can lead to disrupted nutrient cycles and altered energy flows that ripple with unpredictable results through an entire ecosystem. Introduced species may also pose threats to endangered species, and native species diversity.

Another proposed modification is to the permit regulations and would strengthen and augment the requirement that the Director consider certain criteria when evaluating permit applications. Whereas the existing regulation simply indicates that the Director shall evaluate certain matters in deciding whether to grant a permit, the proposed modified regulation would state that the Director may not issue a permit unless the Director first considers certain factors, including but not limited to whether: the duration of the proposed activity is no longer than necessary to achieve its stated purpose; the proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities; considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; any potential indirect, secondary or cumulative effects of the activity; and the duration of such effects; and, it is necessary to conduct the proposed activity within the Sanctuary.

The proposed modifications would also add permit application requirements. Permit applicants would be required to submit information addressing the criteria that the Director must consider in order to issue a permit. Additionally, the permit regulation would stipulate that Sanctuary permits are nontransferable.

The proposed modifications to the permit regulations would also stipulate that Sanctuary permits must contain certain terms and conditions. These terms and conditions would include information deemed appropriate by the Director of the National Marine Sanctuary Program.

The proposed modifications to the permit regulations would also expressly require that in addition to any other terms and conditions that the Director deems appropriate, Sanctuary permits must require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

Public Hearings

NOAA is publishing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Management Plan/Draft Environmental Impact Statement (DMP/DEIS). These are joint

public hearings conducted by Cordell Bank, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries and will be held as detailed below:

- 1) November 29, 2006, 6:30 p.m. at the Cambria Pines Lodge, 2905 Burton Drive, Cambria, CA 93428.
- 2) November 29, 2006, 6:30 p.m. at the Bodega Marine Laboratory, 2099 Westside Road, Bodega Bay, CA 94923.
- 3) November 30, 2006, 6:30 p.m. at the Monterey Conference Center, One Portola Plaza, Monterey, CA 93940.
- 4) November 30, 2006, 6:30 p.m. at the Dance Palace Community Center, 503 B Street, Point Reyes Station, CA 94956.
- 5) December 5, 2006, 6:30 p.m. at the University of California Santa Cruz Inn and Conference Center, 611 Ocean Street, Santa Cruz, CA 95060.
- 6) December 5, 2006, 6:30 p.m. at the Fort Mason Center, Firehouse (NE corner of Center), San Francisco, CA 94123
- 7) December 6, 2006, 6:30 p.m. at the Community United Methodist Church, 777 Miramontes Street, Half Moon Bay, CA 94019.

Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a national marine sanctuary be followed for modifying any term of designation. In particular, section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (or in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required documents are being submitted to the Congressional Committees.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA (16 U.S.C. 1434) requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that the DEIS be made available to the public. NOAA has prepared a DMP/DEIS on the proposal and copies are available at the address and website listed in the Address section of this proposed rule. Responses to comments received on the DMP/DEIS will be published in the FMP/FEIS and final rule.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

- (1) An annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety;
- (2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of such recipients; or
- (4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The Sanctuary does not include State waters. Furthermore, the proposed changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Executive Order, however, the NMSP consulted with a number of entities within the State who participated in development of the proposed rule, including but not limited to, the California Department of Boating and Waterways, the California State Lands Commission, the California Department of Fish and Game, and the California Resources Agency.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Based primarily on recent socioeconomic studies, NOAA has identified the following small businesses and small organizations as defined by the Regulatory Flexibility Act. Small business concerns operating within the Sanctuary include commercial fishermen, consumptive recreational charter businesses, and non-consumptive recreational charter businesses. Small organizations operating within the Sanctuary include non-governmental organizations (NGOs) and/or non-profit organizations (NPOs) dedicated to environmental education, research, restoration and conservation concerning marine and maritime heritage resources. There are no small governmental jurisdictions in the Sanctuary. The Sanctuary lies entirely in federal waters.

1. Small Businesses

Small business concerns operating within the Sanctuary include commercial fishermen which vary in number seasonally and annually from approximately 100 to 300 boats; approximately 5 consumptive recreational charter fishing businesses; and approximately 3 non-consumptive recreational charter businesses engaged in wildlife viewing. The approximately 3 small organizations operating within the Sanctuary include NGOs and/or NPOs dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. There are no small governmental jurisdictions in or adjacent to the Sanctuary.

The proposed modification to the Sanctuary's discharge/deposit regulation clarifying that discharges allowed from marine sanitation devices applies only to Type I and Type II marine sanitation devices would not introduce any new restrictions on small entities and would merely clarify the original intent of the Sanctuary's discharge regulation. To the extent that this clarification might affect customary, though illegal, sewage discharge practices of some small entities, the adverse affect on those operations is expected to be less than significant because such discharges may legally occur beyond the Sanctuary's boundary, or vessel sewage may be pumped out and disposed of at mainland ports and harbors. Additionally, some small entities may receive indirect benefits from this clarification, especially as it might pertain to preventing large volume discharges from larger vessels, since it may contribute to sustaining favorable environmental quality in their area of operation.

The proposed modification to the Sanctuary's discharge/deposit regulation that would specify that discharging or depositing fish, fish parts, or chumming materials (bait) may occur only during the conduct of lawful fishing activity within the Sanctuary is not expected to have a significant adverse impact on small entities because it would not apply to conduct of lawful fishing activity within the Sanctuary. In some areas "chumming" marine waters is a practice that has been associated with non-consumptive recreational activities (e.g., attracting sharks for photography). When chumming is used for research purposes(e.g., attracting seabirds for study), this activity may be eligible for a research

permit. Furthermore, small entities not engaged in lawful fishing could apply for and, if appropriate, be granted a Sanctuary permit to conduct this otherwise prohibited discharge/deposit.

The proposed modification that would prohibit the discharge of meals on board vessels would not result in a significant impact to small entities. Resulting impacts may include additional costs and time potentially involved in traveling the additional distance beyond the Sanctuary's boundary to appropriately dispose of food waste, or such waste can be disposed of on shore.

The proposed prohibition on discharge from cruise ships would have no adverse impacts on any current small entity operations. The Small Business Administration defines the threshold for a "Scenic and Sightseeing Transportation, Water" small business as an entity that has average annual receipts of \$6.5 million per year or less (NAICS 487210). "Cruise ship" is defined by the Sanctuary to mean a vessel with 250 or more passenger berths for hire. All of the cruise ship entities that operate vessels in the Sanctuary with more than 250 passenger berths are considered large entities. Additionally, cruise ships will not be prevented from transiting the Sanctuary, as indicated by the exception for "vessel cooling water." All other discharge material must be disposed of beyond the Sanctuary boundary, provided that it does not enter and injure a Sanctuary resource.

The proposed prohibition on abandoning any structure, material or other matter on or in the submerged lands of the Sanctuary would have no significant adverse impacts on small entities within the Sanctuary because none of these operations are dependent upon a practice of abandoning structures or other matter on or in the submerged lands of the Sanctuary. However, should a small entity, such as a research entity, occasionally want to temporarily leave materials on the submerged lands of the Sanctuary, such as research equipment, it can apply for a Sanctuary research permit. Additionally, this prohibition may offer an indirect beneficial effect to marine salvage companies whose services may be called upon to remove grounded, sinking or submerged vessels that would otherwise be illegal to leave abandoned upon the submerged lands of the Sanctuary.

The proposed prohibition on altering the submerged lands on or within the line representing the 50-fathom isobath surrounding Cordell Bank would be applicable but have no adverse impacts on current small entity operations within the Sanctuary. Most small entity operations affected by this prohibition do not normally involve, depend upon, or result in alteration of the submerged lands of the Sanctuary, and as such would not be adversely affected by this regulation. For those entities that do occasionally need to temporarily place materials on the submerged lands of the Sanctuary, such as research entities, the Sanctuary permitting process can be used to allow acceptable activities.

No adverse impact on small entities is expected to result from the proposed regulation change that prohibits the alteration of the submerged lands of the Sanctuary beyond the line representing the 50-fathom isobath surrounding the Bank. Most small entity operations do not normally involve, depend upon, or result in alteration of the submerged lands of the Sanctuary, and as such would not be adversely affected by this regulation. For those entities that do occasionally need to temporarily place materials on the submerged lands of the Sanctuary, such as research entities, the Sanctuary permitting process can be used to potentially allow acceptable activities.

The proposed prohibitions on take and possession of marine mammals, birds, and sea turtles are not expected to result in a significant adverse impact on small entities because those entities' operations may lawfully involve such takes under authorization granted pursuant to the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), or any regulation promulgated under one of these acts. Additionally, non-consumptive recreational charter businesses may receive indirect beneficial effects from these proposed regulations because the added protection to marine mammals, birds, and sea turtles can complement business activities focused on whale watching, or other marine excursion

tours. For example, the additional protection this prohibition affords may potentially result in improved status of such animals at the Farallon Islands. This in turn may lead to the beneficial effect of more consumer interest in services rendered by non-consumptive recreational charter businesses.

The proposed prohibition on introducing or otherwise releasing from within or into the Sanctuary an introduced species is not expected to significantly adversely impact small entities because releasing or otherwise introducing an introduced species is not part of the business associated with most of the identified small entities. Small entities whose business may include catch and release of striped bass (*Morone saxatilis*) (i.e., consumptive recreational charter businesses), would not be affected because the prohibition would not apply to the catch and release of striped bass. By prohibiting such introductions, indirect benefits may result for certain small entities since their activities could potentially be negatively impacted by the spread of introduced species.

Significant adverse impacts to small entities are not expected to result from the revision and strengthening of the Sanctuary's regulation protecting historical resources because the regulation would remain essentially the same with regard to how small entities may conduct their activities. For example, non-consumptive recreational charter businesses are expected to continue to operate chartered dive trips in a manner that does not involve the unlawful practice of injuring or removing submerged cultural resources. Thus, although the proposed revised regulation would be more comprehensive in the protection provided to these resources (prohibiting moving, removing, possessing, injuring or attempting to move, remove, possess, or injure any Sanctuary historical resource), no significant adverse impact is expected for existing lawful business practices. The proposed regulation may offer an indirect beneficial effect for non-consumptive recreational charter businesses, as it would help ensure that submerged cultural resources remain intact for divers to enjoy.

The proposed modification of permit issuance criteria and procedures is not expected to significantly adversely affect any of the small entities within the Sanctuary as most of their activities do not require a Sanctuary permit. The proposed revised permit regulations maintain the status quo scope of activities for which a permit may potentially be issued (research, education, and salvage). On the occasion that a Sanctuary-based research, education, salvage, or other project might require a permit, the proposed modified criteria and procedures are not expected to significantly adversely affect the activities of the requesting entities, because the proposed revised permit regulation in essence merely explicitly clarifies other concepts implicit in the current regulation or a part of agency practice with regard to it.

Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Paperwork Reduction Act

This proposed rule involves an existing information collection requirement currently approved by OMB (OMB approval number 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed rule will not require any change to the currently approved OMB approval and would not result in any change in the public burden in applying for and complying with NMSP permitting requirements.

The public reporting burden for these permit application requirements is estimated to average 1.00 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to David Bizot, National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6,

§ 922.111 Definitions

§ 922.112 Prohibited Or Otherwise Regulated Activities

§ 922.113 Permit Procedures And Issuance Criteria

Appendix A To Subpart G Of Part 922 — Cordell Bank National Marine Sanctuary Boundary Coordinates

Appendix B To Subpart G Of Part 922 — Line Representing the 50-Fathom Isobath Surrounding Cordell Bank

§ 922.110 Boundary

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 399 square nautical miles (nmi) of ocean waters, and submerged lands thereunder, off the northern coast of California approximately 50 miles west-northwest of San Francisco, California. The Sanctuary boundary extends westward (approximately 250 degrees) from the northwestern most point of the Gulf of the Farallones National Marine Sanctuary (GFNMS) towards the 1,000 fathom isobath northwest of Cordell Bank. The Sanctuary boundary then generally follows this isobath in a southerly direction to the southwestern-most point of the GFNMS boundary. The Sanctuary boundary then follows the GFNMS boundary again to the northwestern-most point of the GFNMS. The exact boundary coordinates are listed in Appendix A to this subpart.

§ 922.111 Definitions

In addition to the definitions found in § 922.3, the following definitions apply to this subpart:

Introduced Species means (1) a species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Cruise ship means a vessel with 250 or more passenger berths for hire.

§ 922.112 Prohibited or otherwise regulated activities

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, or chumming materials (bait), used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary;

(B) Biodegradable effluents incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;

(C) Biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or

(D) Vessel engine exhaust.

(ii) Discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship except vessel engine cooling water.

(iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as listed in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) Except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations: removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or on or within the line representing the 50-fathom isobath surrounding the Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person.

(3) Exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary.

(4) (i) Except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations: drilling into, dredging, or otherwise altering Cordell Bank or the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart.

(ii) Except as incidental and necessary for anchoring a vessel or lawful use of any fishing gear during normal fishing operations: drilling into, dredging, or otherwise altering the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank; or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1362 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird taken, except as authorized under the MMPA, ESA, MBTA, under any regulation, as amended, promulgated under these acts, or as necessary for valid law enforcement purposes.

(7) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.113.

(c) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for

national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(d) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

§ 922.113 Permit procedures and issuance criteria

- (a) A person may conduct an activity prohibited by § 922.112 if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.
- (b) The Director, at his or her discretion, may issue a national marine sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds that the activity will:
 - (1) Further research or monitoring related to Sanctuary resources and qualities;
 - (2) Further the educational value the Sanctuary;
 - (3) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or
 - (4) Assist in managing the Sanctuary.
- (c) In deciding whether to issue a permit, the Director shall consider such factors as:
 - (1) The applicant is qualified to conduct and complete the proposed activity;
 - (2) The applicant has adequate financial resources available to conduct and complete the proposed activity;
 - (3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;
 - (4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;
 - (5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;
 - (6) It is necessary to conduct the proposed activity within the Sanctuary;
 - (7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and
 - (8) any other factors as the Director deems appropriate.
- (d) Applications.
 - (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.
 - (2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

- (e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

**APPENDIX A TO SUBPART G OF PART 922— CORDELL BANK NATIONAL
MARINE SANCTUARY BOUNDARY COORDINATES**

Coordinates listed in this Appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

Sanctuary Boundary Coordinates						
Point ID #	Latitude	Longitude		Point ID #	Latitude	Longitude
1	38.26390	-123.18138		26	37.84988	-123.51749
2	38.13219	-123.64265		27	37.82296	-123.49280
3	38.11256	-123.63344		28	37.81365	-123.47906
4	38.08289	-123.62065		29	37.81026	-123.46897
5	38.07451	-123.62162		30	37.80094	-123.47313
6	38.06188	-123.61546		31	37.79487	-123.46721
7	38.05308	-123.60549		32	37.78383	-123.45466
8	38.04614	-123.60611		33	37.78109	-123.44694
9	38.03409	-123.59904		34	37.77033	-123.43466
10	38.02419	-123.59864		35	37.76687	-123.42694
11	38.02286	-123.61531		36	37.83480	-123.42579
12	38.01987	-123.62450		37	37.90464	-123.38958
13	38.01366	-123.62494		38	37.95880	-123.32312
14	37.99847	-123.61331		39	37.98947	-123.23615
15	37.98678	-123.59988		40	37.99227	-123.14137
16	37.97761	-123.58746		41	38.05202	-123.12827
17	37.96683	-123.57859		42	38.06505	-123.11711
18	37.95528	-123.56199		43	38.07898	-123.10924
19	37.94901	-123.54777		44	38.09069	-123.10387
20	37.93858	-123.54701		45	38.10215	-123.09804
21	37.92288	-123.54360		46	38.12829	-123.08742
22	37.90725	-123.53937		47	38.14072	-123.08237
23	37.88541	-123.52967		48	38.16576	-123.09207
24	37.87637	-123.52192		49	38.21001	-123.11913
25	37.86189	-123.52197		50	38.26390	-123.18138

**APPENDIX B TO SUBPART G OF PART 922— LINE REPRESENTING THE 50-
FATHOM ISOBATH SURROUNDING CORDELL BANK**

Coordinates listed in this Appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

Cordell Bank Fifty Fathom Line						
Point ID #	Latitude	Longitude		Point ID #	Latitude	Longitude
1	37.96034	-123.40371		8	38.07588	-123.47195
2	37.96172	-123.42081		9	38.06451	-123.46146

3	37.99110	-123.44379		10	38.07123	-123.44467
4	38.00406	-123.46443		11	38.04446	-123.40286
5	38.01637	-123.46076		12	38.01442	-123.38588
6	38.04684	-123.47920		13	37.98859	-123.37533
7	38.07106	-123.48754		14	37.97071	-123.38605

**CORDELL BANK NMS
PROPOSED REGULATIONS (STRIKE-OUT)**

Subpart K—Cordell Bank National Marine Sanctuary (Amended)

§ 922.110 **Boundary**

The Cordell Bank National Marine Sanctuary (Sanctuary) ~~boundary consists of a 397.05~~ encompasses a total area of approximately 399-square nautical miles (NMmi) area of marine-ocean waters, and submerged lands thereunder, off the northern coast of California approximately 50 miles west-northwest of San Francisco, California. The Sanctuary boundary extends westward (approximately 250 degrees) extending at 180 degrees from the northernmost boundary- northwestern most point of the Gulf of the Farallones National Marine Sanctuary (GFNMS) towards the 1,000 fathom isobath northwest of the Cordell Bank, then south along ~~The Sanctuary boundary then generally follows this isobath in a southerly direction to the southwestern-most point of the GFNMS boundary. to The Sanctuary boundary then follows the GFNMS boundary and back again to the northwestern-most point of the GFNMS. along this boundary to the beginning point. The exact boundary coordinates are listed in Appendix A to this subpart.~~

§922.111 **Definitions**

In addition to the definitions found in Sec. 922.3, the following definitions apply to this subpart:

1) Introduced species means (1) a species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

2) Cruise ship means a vessel with 250 or more passenger berths for hire.

§ 922.112+ **Prohibited or otherwise regulated activities**

~~(a) Except as necessary for national defense or to respond to an emergency threatening life, property, or the environment, or except as permitted in accordance with §922.48 and 922.112 or certified in accordance with §922.47, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted²²~~

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

~~(1)(i) Depositing or dDischarging or depositing, from any location within or into the boundary of the Sanctuary, other than from a cruise ship, any material or other matter of any kind except:~~

(A) Fish, fish parts, chumming materials (bait), used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within produced and discarded during routine fishing activities conducted in the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary; and

(B) Water (including cooling water) and other Bbiodegradable effluents incidental to use of a vessel use in the Sanctuary and generated by: an operable Type I or II mMarine sanitation device approved by the United States Coast Guard (U.S. Coast Guard classification); routine vessel maintenance, e.g. deck wash down; engine exhaust; or meals on board vessels; approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA) 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;

(C) Biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or

(D) Vessel engine exhaust.

~~(ii) Depositing or dDischarging or depositing, from any location beyond the boundaries of within or into the Sanctuary, any material of other or matter of any kind, except for the exclusions listed in paragraph (a)(1)(i) of~~

this section, which enter the Sanctuary and injure a Sanctuary resource: from a cruise ship except vessel engine cooling water.

(iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as listed in paragraph (a)(1)(i) and (a)(1)(ii) of this section.

(2) Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. Except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations: removing, taking, or injuring or attempting to remove, take or injure benthic invertebrates or algae located on Cordell Bank or on or within the line representing the 50-fathom isobath surrounding the Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

(3) Exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary.

(4) (i) Except as incidental and necessary to lawful use of any fishing gear, during normal fishing operations: drilling into, dredging, or otherwise altering Cordell Bank or the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank; or constructing, placing, or abandoning any structure, material or other matter on the Bank or on the submerged lands on or within the line representing the 50-fathom isobath surrounding the Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart.

(ii) Except as incidental and necessary for anchoring a vessel or use of any lawful fishing gear during normal fishing operations: drilling into, dredging, or otherwise altering the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank; or constructing, placing, or abandoning any structure, material or matter on the submerged lands in the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1362 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird taken and except as authorized under the MMPA, ESA, MBTA, and any regulation, as amended, promulgated under these acts, or as necessary for valid law enforcement purposes.

(7) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(b) The prohibitions on paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with §922.48 and §922.113.

(c) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(d) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

§922.112 Permit procedures and criteria

(a) If a person wishes to may conduct an activity prohibited under §922.114~~2~~, that person must apply for, receive, and have in possession on board any vessel used a valid permit issued pursuant to this section and §922.48 authorizing that person to conduct that activity; if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under §922.48 and this section.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Cordell Bank National Marine Sanctuary, Fort Mason, Building #201, San Francisco, CA, 94123.

(c) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds the activity will: subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by §922.111, if the Director finds that the activity will further research related to Sanctuary resources; further the educational or historical value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

- (1) Further research or monitoring related to Sanctuary resources and qualities;
- (2) Further the educational value the Sanctuary;
- (3) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or
- (4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider such factors such as:

- (1) The applicant is qualified to conduct and complete the proposed activity;
- (2) The applicant has adequate financial resources available to conduct and complete the proposed activity;
- (3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;
- (4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and

- qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;
- (5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;
- (6) It is necessary to conduct the proposed activity within the Sanctuary;
- (7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and
- (8) any other factors the Director deems appropriate.

(d) Applications.

- (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.
- (2) In addition to the information listed in sec. 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

APPENDIX A TO SUBPART K OF PART 922—CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Point No.	Latitude	Longitude
1	38°15'51.72"	123°10'52.44"
2	38°07'55.88"	123°38'33.53"
3	38°06'45.21"	123°38'00.40"
4	38°04'58.41"	123°37'14.34"
5	38°04'28.22"	123°37'17.83"
6	38°03'42.75"	123°36'55.66"
7	38°03'11.10"	123°36'19.78"
8	38°02'46.12"	123°36'21.98"
9	38°02'02.74"	123°35'56.56"
10	38°01'27.10"	123°35'55.12"
11	38°01'22.28"	123°36'55.13"
12	38°01'11.54"	123°37'28.21"
13	38°00'49.16"	123°37'29.77"
14	37°59'54.49"	123°36'47.90"
15	37°59'12.39"	123°35'59.55"
16	37°58'39.40"	123°35'14.85"
17	37°58'00.57"	123°34'42.93"
18	37°57'18.99"	123°33'43.15"
19	37°56'56.42"	123°32'51.97"
20	37°56'18.90"	123°32'49.24"
21	37°55'22.37"	123°32'36.96"
22	37°54'26.10"	123°32'21.73"
23	37°53'07.46"	123°31'46.81"

24	37°52'34.93"	123°31'18.90"
25	37°51'42.81"	123°31'19.10"
26	37°50'59.58"	123°31'02.96"
27	37°49'22.64"	123°29'34.07"
28	37°48'49.14"	123°28'44.61"
29	37°48'36.95"	123°28'08.29"
30	37°48'03.37"	123°28'23.27"
31	37°47'14.54"	123°28'01.97"
32	37°47'01.48"	123°27'16.78"
33	37°46'51.92"	123°26'48.98"
34	37°46'13.20"	123°26'04.79"
35	37°46'00.73"	123°25'36.99"
36	37°50'25.31"	123°25'26.53"
37	37°54'32.28"	123°23'16.49"
38	37°57'45.71"	123°19'17.72"
39	37°59'29.27"	123°14'12.16"
40	37°59'43.71"	123°08'27.55"
41	38°03'10.20"	123°07'44.35"
42	38°04'01.64	123°06'58.92"
43	38°08'33.32"	123°04'56.24"
44	38°12'42.06"	123°07'10.21"

[61 FR 51577, Oct. 3, 1996]

APPENDIX A TO SUBPART K OF PART 922— CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Coordinates listed in this Appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

Sanctuary Boundary Coordinates						
Point ID #	Latitude	Longitude		Point ID #	Latitude	Longitude
1	38.26390	-123.18138		26	37.84988	-123.51749
2	38.13219	-123.64265		27	37.82296	-123.49280
3	38.11256	-123.63344		28	37.81365	-123.47906
4	38.08289	-123.62065		29	37.81026	-123.46897
5	38.07451	-123.62162		30	37.80094	-123.47313
6	38.06188	-123.61546		31	37.79487	-123.46721
7	38.05308	-123.60549		32	37.78383	-123.45466
8	38.04614	-123.60611		33	37.78109	-123.44694
9	38.03409	-123.59904		34	37.77033	-123.43466
10	38.02419	-123.59864		35	37.76687	-123.42694
11	38.02286	-123.61531		36	37.83480	-123.42579
12	38.01987	-123.62450		37	37.90464	-123.38958
13	38.01366	-123.62494		38	37.95880	-123.32312
14	37.99847	-123.61331		39	37.98947	-123.23615
15	37.98678	-123.59988		40	37.99227	-123.14137

<u>16</u>	<u>37.97761</u>	<u>-123.58746</u>		<u>41</u>	<u>38.05202</u>	<u>-123.12827</u>
<u>17</u>	<u>37.96683</u>	<u>-123.57859</u>		<u>42</u>	<u>38.06505</u>	<u>-123.11711</u>
<u>18</u>	<u>37.95528</u>	<u>-123.56199</u>		<u>43</u>	<u>38.07898</u>	<u>-123.10924</u>
<u>19</u>	<u>37.94901</u>	<u>-123.54777</u>		<u>44</u>	<u>38.09069</u>	<u>-123.10387</u>
<u>20</u>	<u>37.93858</u>	<u>-123.54701</u>		<u>45</u>	<u>38.10215</u>	<u>-123.09804</u>
<u>21</u>	<u>37.92288</u>	<u>-123.54360</u>		<u>46</u>	<u>38.12829</u>	<u>-123.08742</u>
<u>22</u>	<u>37.90725</u>	<u>-123.53937</u>		<u>47</u>	<u>38.14072</u>	<u>-123.08237</u>
<u>23</u>	<u>37.88541</u>	<u>-123.52967</u>		<u>48</u>	<u>38.16576</u>	<u>-123.09207</u>
<u>24</u>	<u>37.87637</u>	<u>-123.52192</u>		<u>49</u>	<u>38.21001</u>	<u>-123.11913</u>
<u>25</u>	<u>37.86189</u>	<u>-123.52197</u>		<u>50</u>	<u>38.26390</u>	<u>-123.18138</u>

APPENDIX B TO SUBPART K OF PART 922— LINE REPRESENTING THE 50-FATHOM ISOBATH SURROUNDING CORDELL BANK

Coordinates listed in this Appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

<u>Cordell Bank Fifty Fathom Line</u>						
<u>Point ID #</u>	<u>Latitude</u>	<u>Longitude</u>		<u>Point ID #</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>37.96034</u>	<u>-123.40371</u>		<u>8</u>	<u>38.07588</u>	<u>-123.47195</u>
<u>2</u>	<u>37.96172</u>	<u>-123.42081</u>		<u>9</u>	<u>38.06451</u>	<u>-123.46146</u>
<u>3</u>	<u>37.99110</u>	<u>-123.44379</u>		<u>10</u>	<u>38.07123</u>	<u>-123.44467</u>
<u>4</u>	<u>38.00406</u>	<u>-123.46443</u>		<u>11</u>	<u>38.04446</u>	<u>-123.40286</u>
<u>5</u>	<u>38.01637</u>	<u>-123.46076</u>		<u>12</u>	<u>38.01442</u>	<u>-123.38588</u>
<u>6</u>	<u>38.04684</u>	<u>-123.47920</u>		<u>13</u>	<u>37.98859</u>	<u>-123.37533</u>
<u>7</u>	<u>38.07106</u>	<u>-123.48754</u>		<u>14</u>	<u>37.97071</u>	<u>-123.38605</u>

**CORDELL BANK NMS
PROPOSED DESIG. DOC. (STRIKE-OUT)**

~~Final-Proposed Revised~~ Designation Document for the
Cordell Bank National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine, Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. §§ 1431 *et seq.* (the “Act”), the Cordell Bank and its surrounding waters offshore northern California, as described in Article II, are hereby designated as a National Marine Sanctuary for the purpose of protecting and conserving that special, discrete, highly productive marine area and ensuring the continued availability of the ecological, research, educational, aesthetic, historical, and recreational resources therein.

Article I. Effect of Designation

Cordell Bank National Marine Sanctuary (the Sanctuary) was designated on May 24, 1989 (54 FR 22417). Section 308 of the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.* (NMSA). The Act authorized the promulgation authorizes the issuance of such regulations as are may be necessary to implement the designation, including managing, and reasonable to protect the characteristics of the Sanctuary that five it protecting and conserving the conservation, recreational, ecological, historical, cultural, archeological, scientific, research, educational, and/or aesthetic resources value and qualities of the Sanctuary. Section 1 of Article IV As used in the Act, this Designation Document, and the Sanctuary regulations, the word “historical” includes cultural, archacological, and paleontological. Article 4 of this Designation Document lists those activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to requiring regulation now or which may require regulations in the future in order to protect protect Sanctuary resources and qualities. Listing of an activity authorizes but does not necessarily mean that a type of activity will be regulated; require its regulation. Therefore, the listing of an activity does not imply that the activity will be regulated in the future. However, if an type of activity is not listed it can may not be regulated, except on an emergency basis, for no longer than 120 days where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resourcee, without amending article 4 to list the activity. Such an amendment can only be accomplished by following the same procedures through which the original designation was made; unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of a ~~397.05-~~ 399 square nautical mile area of marine waters and the submerged lands thereunder encompassed by a boundary extending ~~at 180~~ approximately 250° from the northernmost boundary of the ~~Point Reyes-Farallon Islands-Gulf of the Farallones~~ PRGENMS National Marine Sanctuary (PRGENMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRGENMS boundary and back to the northeast along this boundary to the beginning point. The precise boundaries are set forth in the regulations.

Article ~~III~~ 3. Characteristics of the Area that Give it Particular Value

Cordell Bank is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive environment in a discrete, well-defined area. In addition, the Bank and its surrounding waters may contain historical resources of national significance. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300-400 feet (91-122 meters) deep and ascends to within about ~~445~~ 140 to 120 feet (~~3542-37~~-meters) of the surface. The seasonal upwelling of nutrient-rich bottom waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous biological community flourishing at Cordell Bank includes an exceptional assortment of algae, invertebrates, fishes, marine mammals and seabirds.

Article IV4. Scope of Regulation

Section 1.—Activities Subject to Regulation

The following activities ~~may be regulated~~ are subject to regulation, including prohibition, as may be necessary within the Sanctuary and adjacent waters to the extent necessary and reasonable to ensure the management, protection, and preservation of the protection of the Sanctuary's conservation, recreational, ecological, historical, cultural, archeological, scientific, research, educational, or aesthetic values resources and qualities of this area:

- a. Depositing or discharging any material or substance;
- b. Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on the Bank or within the line representing the 50 fathom isobath surrounding the Bank;
- c. Hydrocarbon (oil and gas) activities;
- d. Anchoring on the Bank or within the 50 fathom contour surrounding the Bank; and
- e. ~~Removing, taking, or injuring or attempting to remove, take, or injure~~ Activities regarding cultural or historical resources;
- f. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- g. Taking or possessing any marine mammal, marine reptile, or bird except as permitted under the Marine Mammal Protection Act, Endangered Species Act or Migratory Bird Treaty Act; and
- h. Introducing or otherwise releasing from within or into the Sanctuary an introduced species;

Section 2.—Consistency with International Law

The regulations governing activities listed in Section 1 of this Article shall apply to foreign flag vessels and foreign persons only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3.—Emergency Regulations

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities immediate, serious, and irreversible damage to a Sanctuary resource, activities, including those not listed in Section 1 of this Article, are subject to immediate temporary regulation, may be regulated within the limits of the Act ~~in on~~ an emergency basis for a period not to exceed 120 days.

Article V5. Relation to Other Regulatory Programs

Section 1.—Fishing

The regulation of fishing is not authorized under Article IV4. ~~Fishing vessels, however, are subject to regulation under Article 4 with respect to discharges and anchoring. All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C §§ 1801 et seq. ("Magnuson-Stevens Act"), shall remain in effect. All permits, licenses, approvals, and other authorizations issued pursuant to the Magnuson-Stevens Act shall be valid within the Sanctuary, subject only to regulations issued pursuant to Article 4. However, all fishing vessels are subject to regulation under Article IV with respect to discharges and anchoring.~~

Section 2.—Defense Activities

The regulation of activities listed in Article IV 4 shall not prohibit any Department of Defense (DOD) activities that are necessary for national defense. All such activities being carried out by DOD within the Sanctuary on the effective date of designation shall be exempt from any prohibitions contained in the Sanctuary regulations. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, shall be subject to all prohibitions contained in the Sanctuary regulations.

Section 3.—Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, approvals, and other authorizations issued pursuant to those programs shall be valid, subject only to the regulation of activities pursuant to Article IV4.

Article ~~6~~VI— Alterations to this Designation

~~This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his/her designee. The terms of designation, as defined under section 304 (a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.~~

GULF OF THE FARALLONES NMS PROPOSED RULE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Gulf of the Farallones National Marine Sanctuary Regulations

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of public availability of draft management plan/draft environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan and revised regulations for the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary). The proposed set of regulations includes new regulations, modifications, as well as clarifications to existing regulations. Proposed new regulations include changes to the permit issuance criteria and procedures, and new or revised prohibitions on: discharging or depositing from within or into the Sanctuary any material or matter from a cruise ship; discharging or depositing from beyond the boundary of the sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality; taking or possessing marine mammals, birds and sea turtles within the Sanctuary; releasing introduced species into the Sanctuary; attracting or approaching a white shark; deserting a vessel or leaving harmful matter aboard a grounded or deserted vessel; possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure, a Sanctuary historical resource; and anchoring a vessel in a designated no-anchoring seagrass protection zone in Tomales Bay. The proposed actions would also permanently fix the shoreward boundary adjacent to Point Reyes National Seashore and add a manager's permit. The revised regulations would clarify: the description of the Sanctuary's boundaries; that the Sanctuary includes the submerged lands within its boundary; the exceptions for the prohibition on discharging or depositing materials and matter into the Sanctuary; and the exceptions for disturbing the submerged lands. Finally, the proposed regulations would revise the prohibition against dredging or otherwise altering the submerged lands by removing the exceptions for ecological maintenance and construction of outfalls; prohibit discharging or depositing into the Sanctuary food waste resulting from meals on board vessels; and remove the exception for discharge of dredge materials disposed of at the interim dumpsite.

The NMSP is also proposing certain revisions to the Sanctuary's Designation Document. Proposed revisions of the Description of the Area would: clarify that the submerged lands at GFNMS are legally part of the Sanctuary and are included in the boundary description; replace the term "seabed" with "submerged lands;" and express boundary coordinates based on the North American Datum of 1983 (NAD 83). Proposed changes to the Scope of Regulations would authorize Sanctuary regulation of: discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality; moving, injuring, possessing, or attempting to move, injure, or possess a Sanctuary historical resource; taking any marine mammal, sea turtle, or bird within or above the Sanctuary; possessing within the Sanctuary any marine mammal, sea turtle, or bird; introducing or otherwise releasing from within or into the Sanctuary an introduced species; attracting or approaching any animal; and operating or deserting a vessel. Additional proposed changes to the Designation Document would provide: an updated and more complete description of characteristics that give the Sanctuary particular value; greater clarity on the applicability of Sanctuary emergency regulations (and

consistency with the National Marine Sanctuary Program regulations of general applicability, 15 CFR Part 922, Subpart E); an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; and various minor revisions to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries. In Article V (Relation to Other Regulatory Programs), the “Fishing and Waterfowl Hunting” section is being revised to clarify the original intent that, although the Sanctuary does not have authority to regulate fishing, fishing vessels may be regulated with respect to discharge and anchoring in accordance with Article IV. No changes are proposed to be made to the “Defense Activities” section of the Designation Document.

DATES:

Public hearings will be held as detailed in the SUPPLEMENTARY INFORMATION section.

Comments will be considered if received by [INSERT 90 DAYS FROM PUBLICATION DATE IN THE FEDERAL REGISTER], 2006.

ADDRESSES: Written comments should be sent by mail to: Brady Phillips, JMPR Management Plan Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by email to jointplancomments@noaa.gov, or by fax to (301) 713-0404. Copies of the DMP/DEIS are available from the same address and on the web at www.sanctuaries.nos.noaa.gov/jointplan. Comments can also be submitted to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Bizot, National Permit Coordinator, National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, Maryland 20910, by email to David.Bizot@noaa.gov, or by fax to 301-713-0404; and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Maria Brown, Sanctuary Superintendent at (415) 561-6622, Extension 301 or Maria.Brown@noaa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 (e)) the National Marine Sanctuary Program (NMSP) has completed its review of the management plan for Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary), located off the coast of northern California. The review has resulted in a proposed new management plan for the Sanctuary, some proposed changes to existing regulations, and some proposed new regulations. The proposed new regulations include prohibitions on:

- discharging or depositing from within or into the Sanctuary any material or matter from a cruise ship, except vessel engine cooling water;
- discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality;
- taking and possessing marine mammals, birds and sea turtles, except as authorized by the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*), and any regulations, as amended, promulgated under these acts;
- introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity, and except species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease,

- permit, license or other authorization issued by the State of California and in effect on the effective date of this regulation;
- attracting a white shark in the Sanctuary, and approaching within 50 meters of any white shark within the line approximating 2 nmi around the Farallon Islands;
- deserting a vessel within the Sanctuary adrift, at anchor or aground;
- leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary; and
- anchoring a vessel in designated no-anchoring seagrass protection zones in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license.

These measures would afford better protection to the nationally significant natural and cultural resources of GFNMS.

Existing regulations would also be revised to:

- clarify that the Sanctuary includes the submerged lands within the Sanctuary boundary;
- permanently fix the shoreward boundary adjacent to Point Reyes National Seashore;
- clarify that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices, and that the vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to lawful fishing activities within the Sanctuary;
- remove an exception for discharging or depositing food waste resulting from meals on board vessels;
- remove an exception for discharging dredge material disposed of at the interim dumpsite;
- specify that attempting to move, remove or injure a sanctuary historical resource is prohibited;
- remove the exceptions to the discharging or depositing prohibition that pertain to discharge of municipal sewage;
- clarify that the exception for laying of pipelines is specific to pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary;
- clarify that the routine maintenance exception to dredging or otherwise altering the seabed applies to docks and piers in Tomales Bay; and
- remove the ecological maintenance exception to the disturbing of the submerged lands prohibition.

The permit regulations for the Sanctuary are also being revised and clarified. Proposed permit regulations would add a manager's permit, which would be a new type of permit for GFNMS. Additionally, in deciding whether to issue a permit, the Director of the NMSP would be required to consider factors such as: duration; effects on Sanctuary resources and qualities; potential indirect, secondary, or cumulative effects; and whether it is necessary to conduct the activity in the Sanctuary. In addition, the proposed modifications to the permit procedures and criteria (15 CFR 922.83) would further refine current requirements and procedures found in the general NMSP regulations (15 CFR 922.48(a) and (c)). The revised section would add language to the GFNMS permit regulations about procedures and criteria for permit renewal. The proposed modifications to the permit regulations would also expressly require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

The proposed revised management plan for the Sanctuary contains a series of action plans that outline management, research, education, operational, and performance measurement activities that are planned for the next five years. The activities are designed to address specific issues facing the Sanctuary and, in doing so, would help achieve the mandates of the NMSP and the Sanctuary's designation.

This document publishes the proposed new regulations and the proposed changes to existing regulations, publishes the text of the proposed Revised Designation Document for the Sanctuary, and announces the availability of the draft management plan and the draft environmental impact statement (DMP/DEIS). The existing GFNMS Designation Document was published at the time of Sanctuary designation in 1981 and, per the NMSA (at 16 U.S.C. 1434(a)(4)), describes the geographic area included within the Sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that are subject to regulation by the Secretary to protect those characteristics. The NMSP is proposing certain revisions to the Sanctuary's Designation Document, which include changes to the description of the area, an updated and more complete description of characteristics that give the Sanctuary particular value, an updated explanation of the relation to other regulatory programs, and a number of substantive changes to the Sanctuary's scope of regulations.

Since designation, the area of GFNMS has been described as approximately 948 square nautical miles. However, as a result of the proposed regulation changes that correct inaccuracies and ambiguities in the coordinates and the description of the Sanctuary's outer and shoreline boundaries, the GFNMS area is now calculated as approximately 966 square nautical miles. The legal description of GFNMS is proposed to be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

Because this proposed action includes changes to the Sanctuary's Designation Document, the DMP/DEIS is developed pursuant to section 304(a)(2) of the NMSA, 16 U.S.C. 1434(a)(2), consistent with, and in fulfillment of, the requirements of the National Environmental Policy Act of 1969.

Sanctuary Environment

Designated on January 16, 1981, (46 FR 7936) the Gulf of the Farallones National Marine Sanctuary (GFNMS) lies off the coast of California, to the west and north of San Francisco. The GFNMS is composed of offshore waters extending out to and around the Farallon Islands and nearshore waters (up to the mean high tide line) from Bodega Head to Rocky Point in Marin.

The GFNMS is characterized by the widest continental shelf on the west coast of the contiguous United States. In the Gulf of the Farallones, the shelf reaches a width of 32 nautical miles (59 km). Shoreward of the Farallon Islands, the continental shelf is a relatively flat sandy/muddy plain, which slopes gently to the west and north from the mainland shoreline. It provides an especially large and relatively shallow (120 meters) habitat for coastal and oceanic seabirds, marine mammals, and fish.

The Farallon Islands lie along the outer edge of the continental shelf, between 13 and 19 nautical miles (24 and 35 km) southwest of Point Reyes and approximately 26 nautical miles (48 km) due west of San Francisco. The islands are located on part of a larger submarine ridge that extends approximately 10 nautical miles along the shelf edge. These islands provide essential habitat for seabirds and marine mammals.

In addition to sandy beaches, rocky cliffs, small coves, and offshore stacks, the GFNMS includes open bays (Bodega Bay, Drakes Bay) and enclosed bays or estuaries (Bollinas Lagoon, Tomales Bay, Estero Americano, and Estero de San Antonio). The open bays are sheltered from prevailing southward flows and allow some plankton to be retained there. Water and water-borne materials in the enclosed bays are exchanged with coastal waters through tidal currents, although inner bay waters may be resident for long periods. The mouths of the two Esteros are closed during summer and fall, but the mouths of Tomales and Bollinas remain open year-round. Tomales Bay, Bollinas Lagoon and Bodega Bay lie on the San Andreas Fault.

Offshore, currents are dominated by the seasonal winds. Lying inshore of the large California Current, these waters are characterized by wind-driven upwelling, high nutrient supply and high levels of phytoplankton. The inner Gulf of Farallones is also influenced by outflow from San Francisco Bay.

During the spring-summer upwelling season (typically March-July), strong northerly winds drive surface waters offshore (due to the Coriolis effect) and cold deep waters are upwelled to the surface over the continental shelf. These waters are rich in nutrients and feed very high levels of primary production near-surface. The resultant phytoplankton blooms are the foundation of the rich GFNMS food webs, involving zooplankton, benthic invertebrates, fish, birds, and mammals. Over the middle and outer shelf, currents are strongly southward, but nearshore flow patterns are mixed. During brief periods of weak winds (relaxation periods), much of the inner and mid-shelf waters move as currents north along the coast past Point Reyes and Bodega Head. Phytoplankton levels peak during these relaxation periods. At depth along the shelf-edge, the California Undercurrent carries cold high-salinity waters north, providing a source for upwelling. And, nearshore, the San Francisco Bay and other outflows are carried south by the prevailing coastal currents.

In the fall, upwelling winds weaken and water temperatures increase. Sometimes known as the oceanic season, this period (typically August-November) is also characterized by onshore flow of oceanic surface waters (warmer and lower salinity). Periods of upwelling winds and phytoplankton blooms do still occur during the fall.

Winter in the GFNMS is characterized by the passage of rain-bearing cold fronts, accompanied by westerly and southerly winds that drive northward flow and downwelling over the shelf. While these fronts characterize the months of December through March, northerly upwelling winds are equally common and many upwelling events are also observed (although phytoplankton blooms are weak owing to the lower levels of light in winter). During the downwelling events, surface waters move onshore and land runoff is held nearshore. Further, large runoff plumes are also subject to the Coriolis effect and the San Francisco Bay outflow typically remains nearshore and moves north around Point Reyes following major rain and runoff events. Lowest salinities are observed in the GFNMS during this winter runoff season.

Both offshore, in the core of the California Current, and in the waters over the shelf, flows exhibit a complexity due to eddies. In the coastal waters of the GFNMS, fast flow past headlands like Point Reyes and Bodega Head creates eddies that may then move through the region. This interaction of flow with the coastline results in a partial retention of these rich, upwelled waters and helps explain the high levels of plankton, fish, mammals and birds observed in this region – marine life protected by the Sanctuary.

Proposed Revised Designation Document

The Designation Document for the Sanctuary contains the terms of designation as defined in the NMSA (16 U.S.C. 1434(a)(4)). NOAA is proposing some changes to the Designation Document as part of this management plan review process. Specifically, NOAA is proposing to clarify in the Designation Document that the submerged lands at GFNMS are legally part of the Sanctuary and are included in the boundary description. At the time the Sanctuary was designated in 1981, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the NMSA) characterized national marine sanctuaries as consisting of coastal and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub.L. 98-498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, NOAA is updating the Designation Document and the

boundary description, and is also replacing the term “seabed” with “submerged lands.” Additionally, boundary coordinates in the revised Designation Document and in the sanctuary regulations would be expressed by coordinates based on the North American Datum of 1983 (NAD 83).

NOAA also proposes to modify the Designation Document to authorize Sanctuary regulation of: discharging or depositing from beyond the boundary of the Sanctuary; possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure, a Sanctuary historical resource; taking or possessing any marine mammal, sea turtle, or bird within or above the Sanctuary except as permitted by the Marine Mammal Protection Act, Endangered Species Act, and the Migratory Bird Treaty Act; releasing or otherwise introducing from within or into the Sanctuary an introduced species; attracting or approaching any animal; and operating a vessel (i.e., watercraft of any description) within the Sanctuary, including but not limited to, anchoring or deserting. These proposed revisions to and addition of new activities subject to Sanctuary regulation would enable new and emerging resource management issues to be addressed, and are necessary in order to ensure the protection, preservation, and management of the conservation, recreational, ecological, historical, cultural, educational, archeological, scientific, and esthetic resources and qualities of the Sanctuary.

Additional proposed changes to the Designation Document would provide: an updated and more complete description of characteristics that give the Sanctuary particular value; greater clarity on the applicability of Sanctuary emergency regulations (and consistent with the National Marine Sanctuary Program regulations of general applicability, 15 CFR Part 922, Subpart E); an updated explanation of the effect of Sanctuary authority on preexisting leases, permits, licenses, and rights; and various minor revisions to conform wording of the Designation Document, where appropriate, to wording used for more recently designated sanctuaries. In Article V (Relation to Other Regulatory Programs), the “Fishing and Waterfowl Hunting” section is being revised to clarify the original intent that, although the Sanctuary does not have authority to regulate fishing, fishing vessels may be regulated with respect to discharge and anchoring in accordance with Article IV. No changes are proposed to be made to the “Defense Activities” section of the Designation Document.

An additional proposed change to the Designation Document would update Article VI regarding the process to modify the Designation. This change would delete the requirement that modifications to the Designation must be approved by the President of the United States and would require instead that changes be approved by the Secretary of Commerce or his or her designee. This would be consistent with amendments to the NMSA that were enacted after the Sanctuary was designated in 1981 and which removed Presidential approval as a requirement for designation.

The NMSP has carefully considered existing state and federal authorities in proposing new regulatory authorities to ensure protection and management of sanctuary resources. Proposed new authorities are intended to complement existing authorities.

Proposed Revised Designation Document for Gulf of the Farallones National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92-532 (the Act), the waters and submerged lands along the Coast of California north and south of Point Reyes Headlands, between Bodega Head and Rocky Point and surrounding the Farallon Islands, are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article I. Effect of Designation

Within the area designated in 1981 as The Point Reyes/ Farallon Islands Marine Sanctuary (the Sanctuary) described in Article II, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Sanctuary consists of an area of the waters and the submerged lands thereunder adjacent to the coast of California of approximately 966 square nautical miles (nmi), extending seaward to a distance of 6 nmi from the mainland and 12 nmi from the Farallon Islands and Noonday Rock, and including the intervening waters and submerged lands. The precise boundaries are defined by regulation.

Article III. Characteristics of the Area That Give it Particular Value

The Sanctuary includes a rich and diverse marine ecosystem and a wide variety of marine habitats, including habitat for over 36 species of marine mammals. Rookeries for over half of California's nesting marine bird and nesting areas for at least 12 of 16 known U.S. nesting marine bird species are found within the boundaries. Abundant fish and shellfish are also found within the Sanctuary.

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation.

The following activities are subject to regulation, including prohibition, as may be necessary to ensure the management, protection, and preservation of the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities of this area:

- a. Hydrocarbon operations.
- b. Discharging or depositing any substance within or from beyond the boundary of the Sanctuary.
- c. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary.
- d. Activities regarding cultural or historical resources.
- e. Introducing or otherwise releasing from within or into the Sanctuary an introduced species.
- f. Taking or possessing any marine mammal, marine reptile, or bird within or above the Sanctuary except as permitted by the Marine Mammal Protection Act, Endangered Species Act and Migratory Bird Treaty Act.
- g. Attracting or approaching any animal.
- h. Operating a vessel (i.e., watercraft of any description) within the Sanctuary, including, but not limited to, anchoring or deserting.

Section 2. Consistency with International Law.

The regulations governing the activities listed in section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. Emergency Regulations. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Relation to Other Regulatory Programs.

Section 1. Fishing and Waterfowl Hunting. The regulation of fishing, including fishing for shellfish and invertebrates, and waterfowl hunting, is not authorized under Article IV. However, fishing vessels may be regulated with respect to vessel operations in accordance with Article IV, section 1, paragraphs (b) and (h), and mariculture activities involving alterations of or construction on the seabed, or release of introduced species by mariculture activities not covered by a valid lease from the State of California and in effect on the effective date of the final regulation, can be regulated in accordance with Article IV, section 1, paragraph (c) and (e). All regulatory programs pertaining to fishing, and to waterfowl hunting, including regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated under the Magnuson-Stevens Fishery Conservation and Management Act of 1976, 16 U.S.C § 1801 *et seq.*, will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV.

The term “fishing” as used in this Article and in Article IV includes mariculture.

Section 2. Defense Activities. The regulation of activities listed in Article IV shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. Other Programs. All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV. The Sanctuary regulations will set forth any necessary certification procedures.

Article VI. Alterations to This Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.

[END OF DESIGNATION DOCUMENT]

Summary of the Proposed Regulatory Amendments

The proposed regulatory changes would clarify that “submerged lands” are within the Sanctuary boundary, i.e. part of the Sanctuary. This would update the boundary regulation to make it consistent with the NMSA and the revised Designation Document. (See explanation of boundary clarification in preceding discussion of proposed revised Designation Document.) The Sanctuary’s outer boundary coordinates and description of the shoreline boundary demarcation are also proposed for technical corrections using the North American Datum of 1983, and to clarify that the shoreline boundary is the Mean High Water Line (MHWL) of island shores. Since designation the area of GFNMS has been described as approximately 948 square nautical miles. However, adjusting for technical corrections and using updated technologies, the GFNMS area is now calculated as approximately 966 square nautical miles. The legal description of GFNMS is proposed to be updated to reflect this change. This update would not constitute a change in the geographic area of the Sanctuary but rather a more precise estimate of its size.

The proposed regulatory changes would include permanently fixing the shoreward boundary of the Sanctuary that is adjacent to Point Reyes National Seashore (PRNS). The 1981 sanctuary designation linked that portion of the boundary to the seaward limit of PRNS. Since then, PRNS has made at

least two boundary modifications in areas adjacent to the sanctuary, requiring the sanctuary to redefine its own boundary, the geographic extent of its authority, and enforcement and implementation of programs. Fixing the shoreward boundary of the Sanctuary that is adjacent to PRNS as it was at the time of Sanctuary designation in 1981 by coordinates using the North American Datum of 1983 would ensure consistency and continuity for the sanctuary boundary, sanctuary management and user groups.

The proposed regulations would also clarify and otherwise modify the existing (1981) regulation prohibiting discharging or depositing any material or other matter. Clarifications would be made to make it clear that the regulation applies to discharges and deposits “from within or into the Sanctuary” (“into” is intended to make clear that the prohibition would apply not only to discharges and deposits originating in the Sanctuary (e.g., from vessels in the Sanctuary), but also, for example, from discharges and deposits above the Sanctuary, such as from aircraft and from outside the Sanctuary such as outfall pipes). The exception for fish, fish parts, or chumming materials (bait) is clarified so that it applies only to such discharges or deposits made during the conduct of lawful fishing activity within the Sanctuary. The exception for biodegradable effluent discharges from marine sanitation devices is clarified to apply only to operable Type I or II marine sanitation devices approved by the United States Coast Guard in accordance with the Federal Water Pollution Control Act, as amended. Although the existing exception for vessel wastes “generated by marine sanitation devices” was intended to prohibit the discharge of untreated sewage into the Sanctuary, the proposed change would clarify that such discharges are only allowed if generated by Type I or II marine sanitation devices. (Type I and Type II marine sanitation devices treat wastes, but Type III marine sanitation devices store waste until it is removed at designated pump-out stations on shore or discharged at sea.)

The discharge and deposit regulation would be modified by removing the exception for discharging or depositing food waste resulting from meals onboard vessels. Coast Guard regulations prohibit discharge of food wastes (garbage) within three nmi and prohibit discharge of food wastes unless ground to less than one inch within three to twelve nmi. The proposed Sanctuary regulation modification would mirror the Coast Guard regulations within three nmi and provide increased protection to Sanctuary resources and qualities from such marine debris vis-à-vis the Coast Guard regulations in the area of the Sanctuary beyond three nmi.

No other changes are being made to the exceptions that allow discharge of water (including vessel cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by routine vessel maintenance (e.g., deck wash down) and engine exhaust. These exceptions do not include and, therefore, it continues to be prohibited to discharge, ballast water or oily wastes resulting from bilge pumping. Ballast water is a known vector for introduced species and other contaminants from the source area. The discharge of oily wastes from bilge pumping is interpreted here to mean any waste that produces a visible sheen. The proposed clarifications and modifications are intended to achieve increased protection of Sanctuary resources and qualities.

The discharge and deposit regulation would be augmented by adding a prohibition on discharging or depositing any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality. “Sanctuary resource” is defined at 15 CFR 922.3 as “any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.” “Sanctuary quality” is defined at 15 CFR 922.3 as “any of those ambient

conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.” This modification would provide consistency with the regulatory language of other more recently designated sanctuaries, and help to protect Sanctuary resources and qualities from harmful influences originating outside the boundaries of the GFNMS. The coastal waters of the sanctuary, particularly the estuarine habitats of Bolinas Lagoon, Tomales Bay, Estero Americano and Estero de San Antonio, are vulnerable to land-based nonpoint source pollution from outside the sanctuary. Sources of concern include runoff, agriculture, marinas and boating activities, past mining, and aging and undersized septic systems. Water quality in offshore areas of the sanctuary could be threatened or impacted by large or continuous discharges from shore, spills by vessels, illegal dumping activities or residual contaminants from past dumping activities. The threat of an offshore oil spill is a constant reality near the busy shipping lanes in and adjacent to the sanctuary. This new proposed regulatory action would contribute to increased protection of water quality, impacting both physical and biological resources in the sanctuary.

The proposed regulations would also modify the existing (1981) regulation prohibiting discharging or depositing any material or other matter by removing the exception of dredge material disposed of at the interim dumpsite, and the discharge of municipal sewage if certified in accordance with 922.84. The interim dumpsite, located approximately 10 nmi south of Southeast Farallon Island, is no longer in use as the permanent dumpsite has been selected and in use for more than fifteen years, making this a remnant and an outdated exception to the discharge regulation. Additionally, at the time of designation of the sanctuary in 1981, there was no permit, license or authorization that had been issued within the sanctuary for municipal sewage discharge. No applications have been submitted for more than 25 years, thus NOAA finds it unnecessary to maintain this exception to the discharge regulation. By removing these two exceptions, the discharge regulation has been streamlined, focusing on current and necessary exceptions to the prohibition.

The proposed exceptions to the revised discharge and deposit regulation would restrict cruise ships to discharging only vessel cooling water into the Sanctuary. “Cruise ship” is defined to mean: a vessel with 250 or more passenger berths for hire. The prohibition would protect Sanctuary water quality from the potentially large volume of wastewater that may be discharged by cruise ships, while allowing for them to transit the Sanctuary. Currently 643,000 cruise ship passengers embark annually from California ports in San Francisco Bay, Los Angeles, and San Diego. Ninety cruise ship arrivals and departures (Metropolitan Stevedore Company) are estimated at the San Francisco Passenger Terminal in 2006. Many of these cruise ships will be entering and exiting the Bay through the northbound vessel traffic lanes, which transit through the Sanctuary. Although partly constrained by the lack of local docking facilities, cruise ship visits are likely to continue to increase as the fleet shifts from international to more domestic cruises, and begins using a new cruise ship docking facility planned for San Francisco Bay. Due to their sheer size and passenger capacity, cruise ships can cause serious impacts to the marine environment. The main pollutants generated by a cruise ship are: sewage, also referred to as black water; gray water; oily bilge water; hazardous wastes, and solid wastes. Based on EPA estimates, in one week a 3000-passenger cruise ship generates about 210,000 gallons of sewage, 1,000,000 gallons of gray water, 37,000 gallons of oily bilge water, more than 8 tons of solid waste, millions of gallons of ballast water containing potential invasive species, and toxic wastes from dry cleaning and photo-processing laboratories. Although cruise ships discharge waste from a single source, they are exempted from regulation under the Clean Water Act (CWA) point source permitting system. The CWA allows the discharge of untreated black water anywhere beyond three miles from shore, and does not require any treatment of gray or ballast water.

The proposed regulatory changes would also modify the existing prohibition against altering the seabed of the Sanctuary or constructing a structure thereupon. The term “seabed” would be replaced with “submerged lands” to be consistent with language used in the NMSA. The proposed

regulations would clarify that the existing (1981) regulation prohibiting disturbance to the submerged lands except for the laying of pipelines is specific to pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary as referenced in 15 CFR 922.82 (1) and in accordance with section 922.84: “pipelines related to hydrocarbon operations outside the sanctuary may be placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and any Areas of Special Biological Significance (ASBS) where certified to have no significant effect on sanctuary resources in accordance with section 922.” Clarifying that the laying of pipelines is specifically limited to hydrocarbon operations adjacent to the Sanctuary (i.e., bordering) rather than anywhere outside the Sanctuary will protect sensitive sanctuary benthic habitats from impacts from disturbance.

The proposed regulations would modify the existing (1981) regulation prohibiting disturbance to the submerged lands, by removing the exception for ecological maintenance. Ecological maintenance is not defined in the regulations or administrative record, making it difficult to interpret, and thus is being removed to streamline the regulatory language. There is no record of the ecological maintenance exception ever having been used.

The proposed regulatory changes would also specify that abandoning, by which is meant leaving without intent to remove, any structure, material, or other matter on or in the submerged lands of the Sanctuary is prohibited. This change would be consistent with similar regulations at more recently designated sanctuaries and would help protect the Sanctuary from debris (e.g., wrecked vessels or seabed research equipment) abandoned by Sanctuary users.

The proposed regulatory changes would also include a modification to the existing (1981) prohibition on removing or damaging any historical or cultural resource. The proposed modification would add “moving” and “possessing” to the existing prohibition; would replace “damage” with “injure,” a term defined at 15 CFR 922.3; and add “attempting” to move, remove, injure, or possess as a prohibition. The intent of this modification is to provide added protection to these fragile, finite, and non-renewable resources so they may be studied, and so appropriate information about them may be made available for the benefit of the public. The proposed regulation would also replace “historical or cultural resource” with “Sanctuary historical resource” to be consistent with regulatory language used at several other more recently designated national marine sanctuaries. (“Historical resource” is defined in NMSP program-wide regulations as “any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include “submerged cultural resources,” and also include “historical properties,” as defined in the National Historic Preservation Act, as amended, and its implementing regulations, at 15 CFR 922.3).

The proposed regulatory changes would also include a new prohibition on take of marine mammals, birds, and sea turtles, except as expressly authorized by the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 et seq.) (MMPA), Endangered Species Act, as amended (16 U.S.C. 1531 et seq.) (ESA), Migratory Bird Treaty Act, as amended (16 U.S.C. 703 et seq.) (MBTA), or any regulation, as amended, promulgated under one of these acts. The intent of this regulation is to bring a special focus to protection of the diverse and vital marine mammal and bird populations and the sea turtles of the Sanctuary. This area-specific focus is complementary to the efforts of other resource protection agencies, especially given that other federal and state authorities must spread limited resources over much wider geographic areas. This regulation would be consistent with regulations at several other more recently designated national marine sanctuaries, and would provide additional deterrence per the higher civil penalties afforded under the NMSA than the penalties provided by the MMPA, ESA, and MBTA. Further, the prohibition would cover all marine mammals, sea turtles, and birds (including, but not limited to, seabirds, shorebirds and waterfowl) within or above the Sanctuary. The Sanctuary’s proposed regulation would not apply if an activity

(including a federally or state-approved fishery) that does or might cause take of marine mammals, birds or sea turtles has been expressly authorized to do so under the MMPA, ESA, or MBTA or an implementing regulation. With this proposed regulation, if the National Marine Fisheries Service (NMFS) or the United States Fish and Wildlife Service (USFWS) issues a permit for the take of a marine mammal, bird, or sea turtle, the permitted taking would be allowed under NMSP regulations and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary regulation.

The proposed regulatory changes would also prohibit possessing within the Sanctuary (regardless of where taken, moved, or removed from) any marine mammal, bird, or sea turtle except as authorized under the MMPA, the ESA, the MBTA, and any regulations, as amended, promulgated under these acts. This proposed regulation serves to provide a stronger deterrent for violations of existing laws protecting marine mammals, birds, or sea turtles, than that offered by those other laws alone. This proposed regulation would also be consistent with recent regulations adopted by other national marine sanctuaries and would enhance protection provided by the prohibition on take of marine mammals, birds and sea turtles (see above). With this proposed regulation, if NMFS or the USFWS issues a permit for the possession of a marine mammal, bird, or sea turtle, the permitted activity would be allowed under NMSP regulations and therefore would not require a permit from the Sanctuary unless the activity would also violate another Sanctuary regulation.

“Take” is defined in the NMSP program-wide regulations at 15 CFR 922.3. The proposed prohibition on take of marine mammals, birds, and sea turtles would complement the current regulation prohibiting disturbing birds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nmi of the Farallon Islands, Bolinas Lagoon, or any ASBS. The current regulation remains unique and important in that it provides special focus on a specific type of activity, operation of motorized aircraft, within particularly sensitive environments of the Sanctuary. The current regulation includes several exceptions (for enforcement purposes, or to transport persons or supplies to or from an Island), that would remain subject to the prohibitions of the MMPA, ESA and the MBTA, and any regulations, as amended, promulgated under these acts.

The proposed regulatory changes would prohibit releasing or otherwise introducing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity; and except species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of this regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species.

“Introduced species” is defined to mean: (1) a species (including any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes. The prohibition would not apply to activities such as the release of striped bass (*Morone saxatilis*) during catch and release fishing activity because the fish was already present in the Sanctuary and its release would not constitute an “introduction.” Striped bass were intentionally introduced in California in 1879, and in 1980 the California Department of Fish and Game initiated a striped bass hatchery program to support the striped bass sport fishery, which according to the California Department of Fish and Game is one of the most important fisheries on the Pacific Coast. The California Department of Fish and Game manages the striped bass fishery through a Striped Bass Management Conservation Plan.

There are currently twelve active state water bottom mariculture leases in Tomales Bay managed by the California Department of Fish and Game. Three of those leases have been recently renewed: M-

430-19 (Marin Oyster Company, 2001), M430-05 (Tomales Bay Oyster Company, 2002), and M-430-06 (Cove Mussel Company, 2002). The other nine leases were issued in the 1980s and have not yet come up for renewal. The exception to the introduced species prohibition would grandfather in the current lease agreements that are in effect on the effective date of the final regulation and allow for the introduction of introduced species as specified in these lease agreements. However, any new lease agreements executed after this date would be subject to this prohibition. Operations conducted under new lease agreements could cultivate native species but would be subject to the prohibition regarding introduced species. NOAA is not aware of any pending lease applications.

This prohibition is designed to help reduce the risk from introduced species, including their seeds, eggs, spores, and other biological material capable of propagating. The intent of the prohibition is to prevent injury to Sanctuary resources and qualities, to protect the biodiversity of the Sanctuary ecosystems, and to preserve the native functional aspects of the Sanctuary ecosystems, all of which are put at risk by introduced species. Introduced species may become a new form of predator, competitor, disturber, parasite, or disease that can have devastating effects upon ecosystems. For example, introduced species impacts on native coastal marine species of the Sanctuary could include: replacement of a functionally similar native species through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated species; increased intra- or interspecies competition with native species; creation or alteration of original substrate and habitat; hybridization with native species; and direct or indirect toxicity (e.g., toxic diatoms). Changes in species interactions can lead to disrupted nutrient cycles and altered energy flows that ripple with unpredictable results through an entire ecosystem. Introduced species may also pose threats to endangered species and native species diversity. A number of non-native species now found in the Gulf of the Farallones region were introduced elsewhere on the west coast but have spread through hull-fouling and accidental introductions.

The proposed regulatory changes would prohibit approaching within 50 meters of a white shark within 2 nmi around the Farallon Islands and prohibit attracting any white shark within the Sanctuary. *Attract or attracting* means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers). Harassment and disturbance related to human interaction is increasing from controversial shark diving programs known as adventure tourism. These programs may degrade the natural environment, impacting the species as a whole, and individual sharks that may be negatively impacted from repeated encounters with humans and boats. Implementing these regulations will resolve user conflicts (shark researchers vs. adventure tourism) and prevent interference with the seasonal feeding behavior of white sharks. Reducing human interaction and chumming would decrease the impacts on natural shark behavior.

The proposed regulatory changes would add a new prohibition on deserting a vessel within the sanctuary. In particular, Tomales Bay is believed to have more than 100 derelict vessels. Leaving vessels unattended increases the likelihood of a calamitous event, or the risk of sinking. These events could result in the discharge of harmful toxins, chemicals or oils into the marine environment, reducing water quality and impacting biological resources and habitats. The proposed regulation would help to protect biological resources from the threat posed by derelict vessels. *Deserting* means: leaving a vessel aground or adrift: (1) without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification; (2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or (3) when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities. Deserting also means leaving a vessel at anchor when its condition

creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

The proposed regulatory changes would add a new prohibition on leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary. Once a vessel is grounded there is a high risk of discharge/deposit of harmful matter into the marine environment. Harmful matter aboard a deserted vessel also poses a threat to water quality. Currently, preemptive removal of harmful substance (e.g., motor oil) is not required by regulation. This prohibition would help reduce or avoid harm to Sanctuary resources and qualities from potential leakage of hazardous or other harmful matter from a vessel.

The proposed regulatory changes would add a new prohibition on anchoring a vessel in a designated no-anchoring seagrass protection zone in Tomales Bay. This prohibition would not apply to vessels anchoring as necessary for mariculture operations that are conducted pursuant to a valid lease, permit, or license. For the purposes of this regulation, anchoring refers to the dropping and placement of an anchor that is attached to a vessel, and which, being cast overboard, retains the vessel in a particular station. There are a total of seven no-anchoring zones proposed as part of this regulation, which comprise 22% of the surface area of Tomales Bay. The zones encompass the known seagrass coverage areas, as based upon data provided by California Department of Fish and Game from 1992, 2000, 2001 and 2002. The location and coverage area of seagrass beds can change over time. The adequacy of these zones will be reviewed and updated periodically, as needed, based on new seagrass monitoring data.

This prohibition is intended to protect seagrass beds in Tomales Bay from the destructive effects of anchoring vessels. *Seagrass* means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*. Seagrass beds are commonly found in tidal and upper subtidal zones and foster high levels of biological productivity. Seagrass beds are located throughout the sanctuary in estuaries, bays and lagoons, such as Tomales Bay and Bolinas Lagoon. Seagrass species, including *Zostera marina* and *Gracilaria spp.*, cover about 397 hectares (1.5 mi²) or 13% of Tomales Bay. The seagrass beds help trap sediments and reduce excess nutrients and pollutants in the water column and thereby contribute towards the Bay's high water quality. Seagrass provides breeding and nursery grounds for fish such as herring, which attach their eggs to the seagrass blades. Seagrass beds also provide important habitats for migratory birds, such as shorebirds, who feed upon the abundant fish and invertebrate species that live in the seagrass beds. The rapid disappearance of this habitat, undergoing conversion for agriculture and aquaculture, poses a particular threat to these vulnerable species. Seagrass beds also serve as buffer zones in protecting coastal erosion and are a filter for pollutants. In 2003 a Technical Committee (TC), consisting of 7 state and federal agencies, was formed to address boater impacts in Tomales Bay. In 2005, members of the TC discussed the need for no-anchor zones in the seagrass beds as a way to prevent habitat damage in Tomales Bay. It was determined that the Gulf of the Farallones National Marine Sanctuary has the broadest jurisdictional authority over the waters of Tomales Bay, and should propose an action to prohibit anchoring by vessels on seagrass beds. This action would afford direct and indirect protection to biological resources and habitats, and the ecological services they provide.

Since 2005, Tomales Bay has been the subject of a collaborative effort among ten local, state and federal agencies (including NOAA/GFNMS) to develop additional conservation measures to better protect the Bay's sensitive habitats and resources. The framework for the multi-agency Tomales Bay plan is proposed to be included in the GFNMS draft management plan as a strategy in the Resource Protection section. Although the multi-agency plan for Tomales Bay is not part of this proposed rule, it would include narrowing the current exception for the construction of docks and piers in Tomales Bay to allow only the reconstruction of existing docks and piers, and only within their existing

footprint; construction of new docks and piers would be prohibited in Tomales Bay. GFNMS is publishing notice of this element of the multi-agency plan and this possible future regulatory change to the GFNMS regulation regarding docks and piers in Tomales Bay in order to advise the public of this potential change and to seek comment on it at this time, together with public comment on the proposed changes to GFNMS regulations that are the subject of this Notice.

The proposed regulatory changes would also modify the Sanctuary's permit regulations by adding a manager's permit to "assist in the managing of the Sanctuary." Activities that "assist in managing the Sanctuary" would be added to the types of activities (i.e., research, education, and salvage) for which the Director may issue a permit. This addition provides a mechanism by which the Director may issue permits for otherwise prohibited activities that will further Sanctuary management.

Another proposed modification to the permit regulations would, based on the decades of permitting experience the NMSP now has, strengthen and augment the criteria that the Director considers when evaluating permit applications. Whereas the existing regulation simply indicates that the Director shall consider certain matters in deciding whether to grant a permit, the proposed modified regulation would state that the Director may not issue a permit unless the Director first considers certain factors, including but not limited to whether: the proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary, or cumulative effects of the activity, and the duration of such effects; and it is necessary to conduct the proposed activity within the Sanctuary.

The proposed modifications would also add permit application requirements. Permit applicants would be required to submit information addressing the criteria that the Director must consider in order to issue a permit. Additionally, the permit regulation would stipulate that Sanctuary permits are nontransferable.

The proposed modifications to the permit regulations would also stipulate that Sanctuary permits must contain certain terms and conditions. These terms and conditions would include information deemed appropriate by the Director of the National Marine Sanctuary Program.

The proposed modifications to the permit regulations would also expressly require that in addition to any other terms and conditions that the Director deems appropriate, Sanctuary permits must require that the permittee agree to hold the United States harmless against any claims arising out of the permitted activities.

Public Hearings

NOAA is publishing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Management Plan/Draft Environmental Impact Statement (DMP/DEIS). These are joint public hearings conducted by CBNMS, GFNMS and MBNMS and will be held as detailed below:

- 1) November 29, 2006, 6:30 p.m. at the Cambria Pines Lodge, 2905 Burton Drive, Cambria, CA 93428.
- 2) November 29, 2006, 6:30 p.m. at the Bodega Marine Laboratory, 2099 Westside Road, Bodega Bay, CA 94923.
- 3) November 30, 2006, 6:30 p.m. at the Monterey Conference Center, One Portola Plaza, Monterey, CA 93940.
- 4) November 30, 2006, 6:30 p.m. at the Dance Palace Community Center, 503 B Street, Point Reyes Station, CA 94956.

- 5) December 5, 2006, 6:30 p.m. at the University of California Santa Cruz Inn and Conference Center, 611 Ocean Street, Santa Cruz, CA 95060.
- 6) December 5, 2006, 6:30 p.m. at the Fort Mason Center, Firehouse (NE corner of Center), San Francisco, CA 94123
- 7) December 6, 2006, 6:30 p.m. at the Community United Methodist Church, 777 Miramontes Street, Half Moon Bay, CA 94019.

Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed for modifying any term of designation. In particular, section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (or in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required documents are being submitted to the specified Congressional Committees.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA (16 U.S.C. 1434) requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that the DEIS be made available to the public. NOAA has prepared a DMP/DEIS on the proposal and copies are available at the address and website listed in the ADDRESSES section of this proposed rule. Responses to comments received on the DMP/DEIS will be published in the FMP/FEIS and final rule.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of section 3(f) of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action falls within the definition of "policies that have federalism implications" within the meaning of Executive Order 13132. The proposed changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Executive Order, the NMSP consulted with a number of entities within the State who participated in development of the proposed rule, including but not limited to, the California Department of Boating and Waterways, the California State Lands Commission, the California Department of Fish and Game, and the California Resources Agency.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Based primarily on recent socioeconomic studies, NOAA has identified the following small businesses and small organizations as defined by the Regulatory Flexibility Act. Small business concerns operating within the Sanctuary include commercial fishermen, mariculture operations,

consumptive recreational charter businesses, and non-consumptive recreational charter businesses. Small organizations operating within the Sanctuary include non-governmental organizations (NGOs) and/or non-profit organizations (NPOs) dedicated to environmental education, research, restoration and conservation concerning marine and maritime heritage resources. There are no small governmental jurisdictions in the Sanctuary, though as explained below, there are some adjacent to the Sanctuary.

Small business concerns operating within the Sanctuary include commercial fishermen who vary in number seasonally and annually from approximately 300 to 500 boats; twelve mariculture lease holders in Tomales Bay; approximately 25 recreational charter fishing businesses; and approximately 7 recreational charter businesses engaged in wildlife viewing. The approximately 3 small organizations operating within the Sanctuary include non-governmental organizations (NGOs) and/or non-profit organizations (NPOs) dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. The Regulatory Flexibility Act (5 U.S.C. 601(5)) defines the term “small governmental jurisdictions” as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Bodega, Bolinas and Tomales Bay settlements would qualify as “small governmental jurisdictions” directly adjacent to the Sanctuary.

The proposed prohibition on abandoning any structure, material or other matter on or in the submerged lands of the Sanctuary would have no significant adverse impacts on small entities within the Sanctuary because none of these operations are dependent upon a practice of abandoning structures or other matter on or in the submerged lands of the Sanctuary. However, should a small entity, such as a research entity, occasionally want to temporarily leave materials on the submerged lands of the Sanctuary, such as research equipment, a Sanctuary research permit could be applied for. Additionally, this prohibition may offer an indirect beneficial effect to marine salvage companies whose services may be called upon to remove grounded, sinking or submerged vessels that would otherwise be illegal to leave abandoned upon the submerged lands of the Sanctuary.

The proposed prohibitions on take and possession of marine mammals, birds and sea turtles are not expected to result in a significant adverse impact on small entities because those entities’ operations may lawfully involve such takes under authorization granted pursuant to the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), or any regulation promulgated under one of these acts. Additionally, non-consumptive recreational charter businesses may receive indirect beneficial effects from these proposed regulations because the added protection to marine mammals, birds, and sea turtles can complement business activities focused on whale watching, kayaking, or other marine excursion tours. For example, the additional protection this prohibition affords to certain animals may potentially result in improved status of such animals, particularly at the Farallon Islands. This in turn may lead to the beneficial effect of more consumer interest in services rendered by non-consumptive recreational charter businesses.

The proposed prohibition on releasing or otherwise introducing from within or into the Sanctuary an introduced species is not expected to significantly adversely impact small entities because releasing or otherwise introducing an introduced species is not part of the business associated with most of the identified small entities. Small entities whose business may include catch and release of striped bass (*Morone saxatilis*) (i.e., consumptive recreational charter businesses) would not be affected because the prohibition would not apply to the catch and release of striped bass. By prohibiting such introductions, indirect benefits may result for certain small entities since their activities could potentially be negatively impacted by the spread of introduced species.

There are twelve mariculture lease holders in Tomales Bay. All twelve of these lease holders would be exempt from the introduced species prohibition if they have active lease agreements at the time of implementation of this regulation. The exception only applies to introduced species specified in the lease agreement and for the term of that active lease. In other words, species cultivated by mariculture activity in Tomales Bay pursuant to a valid lease, permit, license, or other authorization issued by the State of California and in effect on the effective date of this regulation, would be permitted, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated, or the size of the area under cultivation with introduced species. New mariculture leases would not be exempt from this prohibition. This prohibition would not put any current operations out of business.

None of the small entities conducting activities within the Sanctuary is expected to be significantly adversely impacted by the proposed clarifications and corrections to the Sanctuary's boundary because there would be no practical change resulting from these clarifications and corrections. The clarification that submerged lands are part of the existing Sanctuary boundary would not have a significant adverse impact on small entities within the Sanctuary because the Sanctuary has managed the submerged lands and has administered protective measures for them since designation in 1981. The NMSP manages submerged lands as part of national marine sanctuaries and this is reflected in amendments to the NMSA passed in 1984 (16 U.S.C. 1432(3)). Similarly, proposed corrections and clarifications to the Sanctuary's boundary coordinates would not significantly adversely impact any of the small entities operating within the Sanctuary because the proposed corrections and clarifications are merely technical in nature and will not affect the measurable size of the Sanctuary. For example, boundary coordinates are proposed to be updated using the North American Datum of 1983, which provides more accurate information than that originally used to describe the Sanctuary boundary coordinates.

The proposed modification to the Sanctuary's discharge/deposit regulation clarifying that discharges allowed from marine sanitation devices applies only to Type I and Type II marine sanitation devices would not introduce any new restrictions on small entities and would merely clarify the original intent of the Sanctuary's discharge regulation. To the extent that this clarification might affect customary, though illegal, sewage discharge practices of some small entities, the adverse affect on those operations is expected to be less than significant because such discharges may legally occur beyond the Sanctuary's boundary, or vessel sewage may be pumped out and disposed of at mainland ports and harbors. Additionally, some small entities may receive indirect benefits from this clarification, especially as it might pertain to preventing large volume discharges from larger vessels, since it may contribute to sustaining favorable environmental quality in their area of operation.

The proposed modification to the Sanctuary's discharge/deposit regulation that would specify that discharging or depositing fish, fish parts, or chumming materials (bait) may occur only during the conduct of lawful fishing activity within the Sanctuary is not expected to have a significant adverse impact on small entities because it would not apply to conduct of lawful fishing activity within the Sanctuary. In some areas "chumming" is a practice that has been associated with non-consumptive recreational activities (e.g., attracting sharks for photography) or in some cases research activities (e.g., attracting birds for study). The two known shark viewing operations in business during the management plan review process were consulted with and support this proposed regulatory action. Furthermore, small entities not engaged in lawful fishing could apply for and, if appropriate, be granted a Sanctuary permit (e.g., research or education) to conduct this otherwise prohibited discharge/deposit.

The proposed modification that would prohibit the discharge of food waste as a result of meals on board vessels would not result in a significant impact to small entities because it would merely introduce a new requirement that boaters not discard food wastes within the Sanctuary. Such

discharges/deposits are already prohibited under the Act to Prevent Pollution from Ships, 33 U.S.C. 1901 *et seq.*, within the first three nmi from shore and out to twelve nmi unless the food wastes are ground to less than one inch. Therefore, boaters could either properly dispose of food waste at port or appropriately discard it beyond the Sanctuary's boundary, when food wastes are ground to less than one inch. Resulting impacts may include additional costs and time potentially involved in traveling the additional distance offshore to appropriately dispose of food waste, although wastes may also be disposed of shoreside.

The proposed modification to the sanctuary's discharge regulation exception that would result in dredge material disposed of at the interim dumpsite is no longer applicable to any entity as the interim dumpsite is no longer in use.

The proposed modification to the sanctuary's discharge regulation that would no longer exempt municipal sewage discharge is only applicable to Marin and Sonoma counties. No permit applications have been received, nor has interest been expressed in applying for a permit, for the past 25 years. Thus, the proposed modification is expected to result in less than significant impact.

The proposed prohibition on discharge from cruise ships would have no adverse impacts on any current small entity operations. The Small Business Administration defines the threshold for a "Scenic and Sightseeing Transportation, Water" small business as an entity that has average annual receipts of \$6.5 million per year or less (NAICS 487210). "Cruise ship" is defined by the Sanctuary to mean a vessel with 250 or more passenger berths for hire. All of the cruise ship entities that operate vessels in the Sanctuary with more than 250 passenger berths are considered large entities. Additionally, cruise ships would not be prevented from transiting the sanctuary, as indicated by the exception for "vessel cooling water." All other discharge material must be disposed of beyond the sanctuary boundary, provided that it does not enter and injure a sanctuary resource.

Significant adverse impacts are not expected to result for any of the Sanctuary's small entities from the proposed prohibition on discharging or depositing any material or other matter from beyond the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality because in the course of normal, lawful operations, no small entity activities (e.g., commercial fishing businesses, recreational fishing businesses, non-consumptive charter businesses, research and education entities, aircraft businesses) are expected to produce such discharges/deposits beyond the Sanctuary boundary. Additionally, this proposed regulation would except discharges/deposits likely to come from vessel-based small entities, including: biodegradable effluent incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*); biodegradable matter from a vessel resulting from deck wash down and vessel engine cooling water; vessel engine exhaust; and fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity there.

The proposed clarification to the sanctuary's disturbing the submerged lands regulation that would no longer exempt laying of pipelines except those related to hydrocarbon operations in leases adjacent to the sanctuary is not applicable to any known entity. Over the past 25 years, no permit applications have been received, and no interest in applying for a permit has been expressed. Thus, the proposed modification is expected to result in no significant impact.

The proposed modification to the sanctuary's disturbing the submerged lands regulation that would no longer exempt ecological maintenance is not applicable to any known entity. Over the past 25 years, no permit applications have been received, and no interest in applying for a permit has been expressed. Thus, the proposed modification is expected to result in no significant impact.

Significant adverse impacts to small entities are not expected to result from the revision and strengthening of the Sanctuary's regulation protecting historical resources because the regulation would remain essentially the same with regard to how small entities may conduct their activities. For example, non-consumptive recreational charter businesses are expected to continue to operate chartered trips in a manner that does not involve the unlawful practice of injuring or removing submerged cultural resources. Thus, although the proposed revised regulation would be more comprehensive in the protection provided to these resources (prohibiting possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure, a Sanctuary historical resource), no significant adverse impact is expected for existing lawful business practices. The proposed regulation may offer an indirect beneficial effect for non-consumptive recreational charter businesses, as it would help ensure that submerged cultural resources remain intact for divers and shoreline visitors to enjoy.

The proposed prohibition on attracting a white shark in the sanctuary, or approaching within 50 meters of any white shark within 2 nmi of the Farallon Islands would only be applicable to those vessel-based small entities that seasonally (Sept. – Dec.) run adventure tourism operations adjacent to the Farallon Islands. These proposed actions will not prevent the adventure tourism activities from taking place, but do prohibit deployment of attractants in the Sanctuary and limit approach distances around the Farallon Islands. Some of the operations may be eligible for research or education permits. The two known shark viewing operations in business during the management plan review process were consulted with as part of a working group and support this proposed regulatory action. These specific small entities are expected to experience a less than significant impact from this proposed regulatory action.

The proposed prohibition on deserting a vessel and leaving harmful matter on a grounded or deserted vessel in the sanctuary will not have a significant economic impact on any small commercial entity or organization. The estimated 100 plus deserted vessels currently in existence (primarily in Tomales Bay,) may have been privately owned at one time, although at this time there is no apparent ownership, or it is not clear. The prohibition against deserting a vessel or leaving harmful matter on a grounded or deserted vessel would not have a significant adverse impact on small entities, as doing so is not an aspect of operation; as such the adverse impact to small entities would be less than significant. Indirect beneficial effects from this prohibition may result for those small entities, such as commercial and recreational charter businesses, which rely upon a healthy nearshore marine environment that is not impacted by vessel groundings, hazardous spills, and wildlife disturbance risks that grounded vessels can pose.

To the extent that small business-owned vessels do use the Sanctuary, and have in the past anchored in seagrass beds in Tomales Bay, the proposed prohibition against vessels anchoring in designated no-anchoring seagrass protection zones in Tomales Bay will not have a significant economic impact on any small commercial entity or organization. The seven no-anchoring seagrass protection zones comprise about 22% of the existing surface area in Tomales Bay. These zones include many areas that are unsuitable for vessel anchoring since it is exposed mud flat at low tide. As such, the net loss of anchoring area to vessel operators is likely less than 22% of the bay. Further, the no-anchoring zones were created to exclude known anchoring areas near marinas and recreational day-use areas. This design helped to reduce the likelihood of any potential impacts to vessel operators, including sailboats, pleasure craft and recreational fishermen. Although anchoring vessels in the seven proposed zones would be prohibited, vessel operators can still safely anchor in the remaining 78% of the Sanctuary. While the no-anchoring zones may require some individual vessel owners to anchor in a new location outside one of the proposed zones, it would not prohibit them from using their vessel or accessing nearshore facilities. The proposed prohibition on will not affect aquaculture facilities in Tomales Bay because vessels that are operating in association with valid mariculture

leases, permits, or licenses, would not be subject to the prohibition. In addition, the regulation only applies to vessels anchoring in these zones and not facilities, such as mariculture that may require anchoring structures to the seabed. This regulation prohibiting vessels from anchoring in specific zones is not expected negatively impact the 34 permitted commercial Pacific herring fishermen in Tomales Bay. Although the fishermen use gillnets, which are anchored to the bottom of the seafloor near or occasionally in seagrass beds, they do not need to anchor their vessels in seagrass to conduct their operations. Overall this proposed regulation would provide direct and indirect protection to biological resources and habitats, and the ecological services they provide, while having few, if any, impacts to small business entities.

The proposed modification of permit issuance criteria and procedures is not expected to significantly adversely affect any of the small entities within the Sanctuary as most of their activities do not require a Sanctuary permit. Furthermore, the proposed revised permit regulations not only maintain the current scope of activities for which a permit may be issued (research, education, and salvage), but also add one more such activity category (for activities that will assist in managing the Sanctuary), thereby broadening the types of otherwise prohibited activities for which a permit may be granted. If a Sanctuary-based research, education, salvage, or other project requires a permit, the proposed modified criteria and procedures are not expected to significantly adversely affect the activities of the requesting entities, because the proposed revised permit regulation merely clarifies other concepts implicit in the current regulation.

Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Paperwork Reduction Act

This proposed rule involves an existing information collection requirement currently approved by OMB (OMB approval number 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed rule will not require any change to the currently approved OMB approval and would not result in any change in the public burden in applying for and complying with NMSP permitting requirements.

The public reporting burden for these permit application requirements is estimated to average 1.00 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to David Bizot, National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by email to David.Bizot@noaa.gov, by fax to (301) 713-0404; or by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

The proposed revised permit regulations would require the Director of the NMSP to consider the proposed activity for which a permit application has been received. The proposed modifications to the permit procedures and criteria (15 CFR 922.83) would further refine current requirements and procedures of the general National Marine Sanctuary Program regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648-0141). The revised permit regulations would add language about: the qualifications, finances, and proposed methods of the applicant; the compatibility of the proposed method with the value of the Sanctuary and the primary objective of protection of Sanctuary resources and qualities; the necessity of the proposed activity; and the reasonably expected end value of the proposed activity.

Administrative practice and procedure, coastal zone, historic preservation, intergovernmental relations, marine resources, natural resources, penalties, recreation and recreation areas, reporting and recordkeeping requirements, wildlife, incorporation by reference.

John H. Dunnigan
Assistant Administrator for
Ocean Services and Coastal Zone Management

PART 922—[AMENDED]

- Authority: 16 U.S.C. 1431 *et seq.*

2. Subpart H is amended to read as follows:

Appendix B To Subpart H Of Part 922 — 2 nmi From The Farallon Islands Boundary Coordinates

(a) The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 966 square nautical miles (nmi) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (and Noonday Rock) off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then turns southward to a point approximately 6 nmi off Point Reyes, California, where it then turns westward again out towards the 1,000-fathom isobath. The Sanctuary boundary then extends in a southerly direction adjacent to the 1,000-fathom isobath until it intersects the northern extent of the Monterey Bay National Marine

Sanctuary (MBNMS). The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas Creek and follows the MHWL until it intersects its northernmost extent near Bodega Head. The Sanctuary boundary includes Bolinas Lagoon, Estero de San Antonio (to the Tide gate at Valley Ford Franklin School Road) and Estero Americano (to the bridge at Valley Ford Estero Road), as well as Bodega Bay, but not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in Appendix A to this subpart.

§ 922.81 Definitions

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Areas of Special Biological Significance (ASBS) are those areas designated by California's State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et. seq.*

Harmful matter means any substance, or combination of substances, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

Introduced species means (1) a species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Routine maintenance means customary and standard procedures for maintaining docks or piers.

Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Cruise ship means a vessel with 250 or more passenger berths for hire.

Motorized personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

Deserting means

(a) leaving a vessel aground or adrift:

- (1) without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification;
- (2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or
- (3) when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or
- (b) leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

§ 922.82 Prohibited or otherwise regulated activities

The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(a)(1) Exploring for, developing, or producing oil or gas except that pipelines related to hydrocarbon operations adjacent to the Sanctuary may be placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance (ASBS) where certified to have no significant effect on Sanctuary resources in accordance with § 922.84.

(2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

- (i) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary;
- (ii) Biodegradable effluents incidental to vessel use and generated by: an operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- (iii) Biodegradable material or other matter from a vessel resulting from deck wash down or vessel engine cooling water; or
- (iv) Vessel engine exhaust.

(3) Discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship except vessel engine cooling water.

(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the exclusions listed in paragraphs (a)(2)(i) through (iv) and (a)(3) of this section.

(5) Constructing any structure other than a navigation aid; drilling through the submerged lands; placing or abandoning any structure; and dredging or otherwise altering the submerged lands in any way, except:

- (i) By anchoring vessels in a manner not otherwise prohibited by this part (see § 922.82 (16));
- (ii) Bottom trawling from a commercial fishing vessel;
- (iii) The laying of pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary in accordance with (1) of this section;
- (iv) Routine maintenance and construction of docks and piers on Tomales Bay; and

(v) Mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.

(6) Operating any vessel engaged in the trade of carrying cargo within an area extending 2 nmi from the Farallon Islands, Bolinas Lagoon or any ASBS. This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except:

To transport persons or supplies to or from the Islands or mainland areas adjacent to Sanctuary waters or any ASBS. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

(8) Disturbing birds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nmi of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for enforcement purposes.

(9) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(A) striped bass (*Morone saxatilis*) released during catch and release fishing activity; and

(B) species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species.

(11) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1362 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(12) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle, or bird taken, except as authorized under the MMPA, ESA, MBTA, under any regulation, as amended, promulgated under these Acts, or as necessary for valid law enforcement purposes.

(13) Attracting a white shark in the Sanctuary; or approaching within 50 meters of any white shark within the line approximating 2 nmi around the Farallon Islands. The coordinates for the line approximating 2 nmi around the Farallon Islands are listed in Appendix B to this subpart.

(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(16) Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in Appendix C to this subpart.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.83.

§ 922.83 Permit procedures and issuance criteria

(a) A person may conduct an activity prohibited by 922.82 if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

- (1) Further research or monitoring related to Sanctuary resources and qualities;
- (2) Further the educational value of the Sanctuary;
- (3) Further salvage or recovery operations; or
- (4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider factors such as:

- (1) The applicant is qualified to conduct and complete the proposed activity;
- (2) The applicant has adequate financial resources available to conduct and complete the proposed activity;
- (3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;
- (4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;
- (5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;
- (6) It is necessary to conduct the proposed activity within the Sanctuary;
- (7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and
- (8) Any other factors as the Director deems appropriate.

(d) Applications.

- (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, Building 201, Fort Mason, San Francisco, CA 94123.
 - (2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.
- (e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

§ 922.84 Certification of other permits

- (j) A permit, license, or other authorization allowing: the laying of any pipeline related to hydrocarbon operations in leases adjacent to the Sanctuary and placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and any ASBS must be certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.
- (k) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.
- (l) Any certification called for in this section shall be presumed unless the Director acts to deny or condition certification within 60 days from the date that the Director receives notice of the proposed permit and the necessary supporting data.
- (m) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

APPENDIX A TO SUBPART H OF PART 922 — GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID Number	Latitude	Longitude
Sanctuary Boundary		
1	38.29896	-123.05989
2	38.26390	-123.18138
3	38.21001	-123.11913
4	38.16576	-123.09207
5	38.14072	-123.08237
6	38.12829	-123.08742
7	38.10215	-123.09804
8	38.09069	-123.10387
9	38.07898	-123.10924
10	38.06505	-123.11711
11	38.05202	-123.12827
12	37.99227	-123.14137
13	37.98947	-123.23615

14	37.95880	-123.32312
15	37.90464	-123.38958
16	37.83480	-123.42579
17	37.76687	-123.42694
18	37.75932	-123.42686
19	37.68892	-123.39274
20	37.63356	-123.32819
21	37.60123	-123.24292
22	37.59165	-123.22641
23	37.56305	-123.19859
24	37.52001	-123.12879
25	37.50819	-123.09617
26	37.49418	-123.00770
27	37.50948	-122.90614
28	37.52988	-122.85988
29	37.57147	-122.80399
30	37.61622	-122.76937
31	37.66641	-122.75105

APPENDIX B TO SUBPART H OF PART 922 — 2 NMI FROM THE FARALLON ISLANDS
BOUNDARY COORDINATES

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID Number (2nmi from the Farallon Islands Boundary)	Latitude	Longitude
0	37.77670	-123.14954
1	37.78563	-123.14632
2	37.79566	-123.13764
3	37.80296	-123.12521
4	37.80609	-123.11189
5	37.80572	-123.09847
6	37.80157	-123.08484
7	37.79776	-123.07836
8	37.79368	-123.06992

9	37.78702	-123.06076
10	37.77905	-123.05474
11	37.77014	-123.05169
12	37.76201	-123.05151
13	37.75758	-123.05248
14	37.76078	-123.04115
15	37.76151	-123.02803
16	37.75898	-123.01527
17	37.75267	-123.00303
18	37.74341	-122.99425
19	37.73634	-122.99017
20	37.73036	-122.97601
21	37.72042	-122.96548
22	37.70870	-122.95890
23	37.69737	-122.95720
24	37.68759	-122.95882
25	37.67768	-122.96469
26	37.66905	-122.97427
27	37.66352	-122.98478
28	37.66037	-122.99741
29	37.66029	-123.00991
30	37.66290	-123.02133
31	37.67102	-123.03830
32	37.67755	-123.04612
33	37.68844	-123.05334
34	37.69940	-123.05567
35	37.71127	-123.06858

36	37.72101	-123.07329
37	37.73167	-123.07399
38	37.73473	-123.07340
39	37.73074	-123.08620
40	37.73010	-123.09787
41	37.73265	-123.11296
42	37.73685	-123.12315
43	37.74273	-123.13124
44	37.74725	-123.13762
45	37.75467	-123.14466
46	37.76448	-123.14917
47	37.77670	-123.14954

APPENDIX C TO SUBPART H OF PART 922 — NO-ANCHORING SEAGRASS PROTECTION ZONES IN TOMALES BAY

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Zone 1: Zone 1 is an area of approximately 39.9 hectares offshore south of Millerton Point. The eastern boundary is a straight line that connects points 1 and 2 listed in the coordinate table below. The southern boundary is a straight line that connects points 2 and 3, the western boundary is a straight line that connects points 3 and 4 and the northern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 1 Point ID	Latitude	Longitude
1	38.10571	-122.84565
2	38.09888	-122.83603
3	38.09878	-122.84431
4	38.10514	-122.84904
5	same as 1	same as 1

ZONE 2: Zone 2 is an area of approximately 50.3 hectares that begins just south of Marconi and extends approximately 3 kilometers south along the eastern shore of Tomales Bay. The eastern

boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3. The western boundary is a series of straight lines that connect points 3 through 6 in sequence and then connects point 6 to point 1. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 1 Point ID	Latitude	Longitude
1	38.14071	-122.87440
2	38.11386	-122.85851
3	38.11899	-122.86731
4	38.12563	-122.86480
5	38.12724	-122.86488
6	38.13326	-122.87178
7	Same as 1	Same as 1

ZONE 3: Zone 3 is an area of approximately 4.6 hectares that begins just south of Marshall and extends approximately 1 kilometer south along the eastern shore of Tomales Bay. The eastern boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3, the western boundary is a straight line that connects point 3 to point 4, and the northern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 3 Point ID	Latitude	Longitude
1	38.16031	-122.89442
2	38.15285	-122.88991
3	38.15250	-122.89042
4	38.15956	-122.89573
5	Same as 1	Same as 1

ZONE 4: Zone 4 is an area of approximately 61.8 hectares that begins just north of Nicks Cove and extends approximately 5 kilometers south along the eastern shore of Tomales Bay to just south of Cypress Grove. The eastern boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3. The western boundary is a series of straight lines that connect points 3 through 9 in sequence. The northern boundary is a straight line that connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 4 Point ID	Latitude	Longitude
1	38.20073	-122.92181
2	38.16259	-122.89627
3	38.16227	-122.89650
4	38.16535	-122.90308
5	38.16869	-122.90475
6	38.17450	-122.90545
7	38.17919	-122.91021
8	38.18651	-122.91404
9	38.18881	-122.91740
10	Same as 1	Same as 1

ZONE 5: Zone 5 is an area of approximately 461.4 hectares that begins east of Lawsons Landing and extends approximately 5 kilometers east and south along the eastern shore of Tomales Bay but excludes areas adjacent (approximately 600 meters) to the mouth of Walker Creek. The boundary follows the mean high water (MHW) mark from point 1 and trends in a southeast direction to point 2 listed in the coordinate table below. From point 2 the boundary trends westward in a straight line to point 3, then trends southward in a straight line to point 4 and then trends eastward in a straight line to point 5. The boundary follows the mean high water line from point 5 southward to point 6. The southern boundary is a straight line that connects point 6 to point 7. The eastern boundary is a series of straight lines that connect points 7 to 9 in sequence and then connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 5 Point ID	Latitude	Longitude
1	38.23122	-122.96300
2	38.21599	-122.93749
3	38.20938	-122.94153
4	38.20366	-122.93246
5	38.20515	-122.92453
6	38.20073	-122.92181
7	38.19405	-122.93477
8	38.20436	-122.94305

9	38.21727	-122.96225
10	Same as 1	Same as 1

ZONE 6: Zone 6 is an area of approximately 3.94 hectares in the vicinity of Indian Beach along the western shore of Tomales Bay. The western boundary follows the mean high water (MHW) line from point 1 northward to point 2 listed in the coordinate table below. The northern boundary is a straight line that connects point 2 to point 3. The eastern boundary is a straight line that connects point 3 to point 4. The southern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 6 Point ID	Latitude	Longitude
1	38.13811	-122.89603
2	38.14040	-122.89676
3	38.14103	-122.89537
4	38.13919	-122.89391
5	Same as 1	Same as 1

ZONE 7: Zone 7 is an area of approximately 32.16 hectares that begins just south of Pebble Beach and extends approximately 3 kilometers south along the western shore of Tomales Bay. The western boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The northern boundary is a straight line that connects point 2 to point 3. The eastern boundary is a series of straight lines that connect points 3 through 7 in sequence. The southern boundary is a straight line that connects point 7 to point 8. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 7 Point ID	Latitude	Longitude
1	38.11034	-122.86544
2	38.13008	-122.88742
3	38.13067	-122.88620
4	38.12362	-122.87984
5	38.11916	-122.87491
6	38.11486	-122.86896
7	38.11096	-122.86468
8	Same as 1	Same as 1

**GULF OF THE FARALLONES NMS
PROPOSED REGULATIONS (STRIKE-OUT)**

Subpart H—Gulf of the Farallones National Marine Sanctuary (Amended)**§ 922.80 Boundary**

(a) The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 966 square nautical miles (nmi) consists of an area of the coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (including Noonday Rock) adjacent to off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from north and south of the Point Reyes Headlands, between Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then turns southward to a point approximately 6nmi off Point Reyes, California, where it then turns westward again and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (NM) out towards the 1,000 fathom isobath. The Sanctuary boundary then extends in a southerly direction adjacent to the 1,000 fathom isobath until it intersects the northern extent of the Monterey Bay National Marine Sanctuary (MBNMS). The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas Creek and follows the MHWL until it intersects its northernmost extent near Bodega Head. The Sanctuary boundary includes Bolinas Lagoon, Estero de San Antonio (to the Tide gate at Valley Ford Franklin School Road) and Estero de Americano (to the bridge at Valley Ford Estero Road), as well as Bodega Bay, but not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in Appendix A to this subpart.

(b) The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 NM beyond State waters. The Sanctuary also includes the waters within 12 NM of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.

§ 922.81 Definitions

In addition to those definitions found at § 922.3, the following definitions applies to this subpart:

Areas of Special Biological Significance (ASBS) means are those areas established by the State of California, prior to the designation of the Sanctuary except that for purposes of the regulations in this subpart, the area established around the Farallon Islands shall not be included. designated by California's State Water Resources Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et. seq.*

Harmful matter means any substance, or combination of substances, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line,

hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4

Introduced species means (1) a species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Routine maintenance means customary and standard procedures for maintaining docks or piers.

Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g. surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Cruise ship means a vessel with 250 or more passenger berths for hire.

Motorized personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

Deserting means

a) leaving a vessel aground or adrift:

(1) without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification;

(2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or
(3) when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or

b) leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

§ 922.82 Prohibited or otherwise regulated activities

~~—(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.83, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:~~

~~——(1) Exploring for, developing and producing oil or gas except that pipelines related to hydrocarbon operations outside adjacent to the Sanctuary may be placed at a distance greater than 2 NM-nmi from the Farallon Islands, Bolinas Lagoon, and Areas of Special Biological Significance (ASBS) where certified to have no significant effect on Sanctuary resources in accordance with §922.84.~~

~~_____ (2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:~~

~~_____ (i) Fish, or fish parts, and chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary and discharged or deposited while conducting lawful fishing activity within the Sanctuary.~~

~~_____ (ii) Biodegradable effluents incidental to vessel use and generated by: an operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWCPA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;~~

~~(iii) Water (including cooling water) and other biodegradable effluents material or other matter from a vessel resulting from deck wash down and vessel engine cooling water; or~~

~~(D) Vessel engine exhaust.~~

~~_____ incidental to vessel use of the Sanctuary generated by:~~

~~Marine sanitation devices;~~

~~Routine vessel maintenance, e.g., deck wash down;~~

~~Engine exhaust; or~~

~~Meals on board vessels.~~

~~(3) Discharging or depositing, from within or into the Sanctuary, any material or matter from a cruise ship except vessel engine cooling water.~~

~~(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the exclusions listed in paragraph (a) (2) (i) through (iv) and (3) of this section.~~

~~(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 NM south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with §922.84.~~

~~_____ (3) Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with § 922.84:~~

~~(5) (i) Constructing any structure other than a navigation aid;~~

~~(ii) Drilling through the seabed submerged lands; and placing or abandoning any structure; and~~

~~(iii) Dredging or otherwise altering the seabed submerged lands; in any way except:~~

~~(A) other than by anchoring vessels in a manner not otherwise prohibited by this part (see §922.82 (16)); or~~

~~(B) Bottom trawling from a commercial fishing vessel;~~

~~(C) The laying of pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary in accordance with (1) of this section;~~

~~(D), except for Routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers on Tomales Bay; and~~

~~(E) Mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.~~

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~~(6) (4) Except to transport persons or supplies to or from islands or mainland areas adjacent to Sanctuary waters, within an area extending 2 NM from the Farallon Islands, Bolinas Lagoon, or any ASBS, or~~
~~Operating any vessel engaged in the trade of carrying cargo within an area extending 2 nmi from the Farallon Islands, Bolinas Lagoon or any area of ASBS, including This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except:~~

~~To transport persons or supplies to or from the Islands or mainland areas adjacent to the Sanctuary waters or any ASBS. In no event shall this section be construed to limit access for fishing, recreational or research vessels.~~

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

~~(8)(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for enforcement purposes.~~

~~(9)(6) Possessing, moving, removing, or damaginginjuring, or attempting to possess, move, remove or injure, a Sanctuary any historical or cultural resource.~~

~~(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:~~

~~(A) striped bass (*Morone saxatilis*) released during catch and release fishing activity; and~~

~~(B) species cultivated by mariculture activities in Tomales Bay pursuant to valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of their final regulation, provided that the renewal by the State of any authorization does not increase the type of introduced species being cultivated or the size of the area under cultivation with introduced species.~~

~~(11) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1362 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*~~

~~(12) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any marine mammal, sea turtle or bird taken except as authorized under the MMPA, ESA, MBTA, under any regulation, as amended, promulgated under these Acts, or as necessary for valid law enforcement purposes.~~

~~(13) Attracting a white shark in the Sanctuary; or aApproaching within 50 meters of any white shark within the line approximating 2nmi around the Farallon Islands. The coordinates for the line approximating 2nmi around the Farallon Islands are listed in Appendix B to this subpart.~~

~~(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.~~

~~(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.~~

~~(16) Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in Appendix C to this subpart.~~

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, except as may be permitted by the Director in accordance with §922.48 and §922.83.

§ 922.83 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity in the Sanctuary, prohibited under § 922.82, if such an activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 of this section.

(b) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds that the activity will:

(1) Further Research or monitoring related to the Sanctuary resources of the Sanctuary and qualities;

(2);

To Further the educational value of the Sanctuary, or;

(3) For Further salvage or recovery operations; or;

(4) Assist in managing the Sanctuary.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Gulf of the Farallones National Marine Sanctuary, Fort Mason, building #201, San Francisco, CA 94123.

(c) In considering deciding whether to grant issue a permit, the Director shall evaluate consider factors such as:

The general professional and financial responsibility of the applicant;

The appropriateness of the methods envisioned to the purpose(s) of the activity;

The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary;

The end value of the activity, and

Other matters as deemed appropriate.

(1) The applicant is qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) Any other factors the Director deems as appropriate.

~~(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.~~

(d) Applications.

(1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, Building 201, Fort Mason, San Francisco, CA 94123

(2) In addition to the information listed in sec. 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

§ 922.84 Certification of other permits

(a) A permit, license, or other authorization allowing: ~~the discharge of municipal sewage, the laying of any pipeline related to hydrocarbon operations in leases adjacent to the Sanctuary and placed outside at a distance greater than 2 NM from the Farallon Islands, Bolinas Lagoon, and any ASBS, or the disposal of dredge material at the interim dumpsite now established approximately 10 NM south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if~~ must be certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(b) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(c) Any certification called for in this section shall be presumed unless the Director acts to deny or condition certification within 60 days from the date that the Director receives notice of the proposed permit and the necessary supporting data.

(d) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

APPENDIX A TO SUBPART H OF PART 922.80—GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

<u>Point ID Number</u>	<u>Latitude</u>	<u>Longitude</u>
<u>Sanctuary Boundary</u>		
<u>1</u>	<u>38.29896</u>	<u>-123.05989</u>
<u>2</u>	<u>38.26390</u>	<u>-123.18138</u>
<u>3</u>	<u>38.21001</u>	<u>-123.11913</u>
<u>4</u>	<u>38.16576</u>	<u>-123.09207</u>
<u>5</u>	<u>38.14072</u>	<u>-123.08237</u>
<u>6</u>	<u>38.12829</u>	<u>-123.08742</u>
<u>7</u>	<u>38.10215</u>	<u>-123.09804</u>
<u>8</u>	<u>38.09069</u>	<u>-123.10387</u>

<u>9</u>	<u>38.07898</u>	<u>-123.10924</u>
<u>10</u>	<u>38.06505</u>	<u>-123.11711</u>
<u>11</u>	<u>38.05202</u>	<u>-123.12827</u>
<u>12</u>	<u>37.99227</u>	<u>-123.14137</u>
<u>13</u>	<u>37.98947</u>	<u>-123.23615</u>
<u>14</u>	<u>37.95880</u>	<u>-123.32312</u>
<u>15</u>	<u>37.90464</u>	<u>-123.38958</u>
<u>16</u>	<u>37.83480</u>	<u>-123.42579</u>
<u>17</u>	<u>37.76687</u>	<u>-123.42694</u>
<u>18</u>	<u>37.75932</u>	<u>-123.42686</u>
<u>19</u>	<u>37.68892</u>	<u>-123.39274</u>
<u>20</u>	<u>37.63356</u>	<u>-123.32819</u>
<u>21</u>	<u>37.60123</u>	<u>-123.24292</u>
<u>22</u>	<u>37.59165</u>	<u>-123.22641</u>
<u>23</u>	<u>37.56305</u>	<u>-123.19859</u>
<u>24</u>	<u>37.52001</u>	<u>-123.12879</u>
<u>25</u>	<u>37.50819</u>	<u>-123.09617</u>
<u>26</u>	<u>37.49418</u>	<u>-123.00770</u>
<u>27</u>	<u>37.50948</u>	<u>-122.90614</u>
<u>28</u>	<u>37.52988</u>	<u>-122.85988</u>
<u>29</u>	<u>37.57147</u>	<u>-122.80399</u>
<u>30</u>	<u>37.61622</u>	<u>-122.76937</u>
<u>31</u>	<u>37.66641</u>	<u>-122.75105</u>

APPENDIX B TO SUBPART H OF PART 922.82—2NM FROM THE FARALLON ISLANDS
BOUNDARY COORDINATES

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

<u>Point ID Number</u>	<u>Latitude</u>	<u>Longitude</u>
<u>2nm from the Farallon Islands</u>		
<u>Boundary</u>		
<u>0</u>	<u>37.77670</u>	<u>-123.14954</u>
<u>1</u>	<u>37.78563</u>	<u>-123.14632</u>
<u>2</u>	<u>37.79566</u>	<u>-123.13764</u>
<u>3</u>	<u>37.80296</u>	<u>-123.12521</u>
<u>4</u>	<u>37.80609</u>	<u>-123.11189</u>
<u>5</u>	<u>37.80572</u>	<u>-123.09847</u>
<u>6</u>	<u>37.80157</u>	<u>-123.08484</u>
<u>7</u>	<u>37.79776</u>	<u>-123.07836</u>
<u>8</u>	<u>37.79368</u>	<u>-123.06992</u>
<u>9</u>	<u>37.78702</u>	<u>-123.06076</u>
<u>10</u>	<u>37.77905</u>	<u>-123.05474</u>
<u>11</u>	<u>37.77014</u>	<u>-123.05169</u>
<u>12</u>	<u>37.76201</u>	<u>-123.05151</u>
<u>13</u>	<u>37.75758</u>	<u>-123.05248</u>
<u>14</u>	<u>37.76078</u>	<u>-123.04115</u>

<u>15</u>	<u>37.76151</u>	<u>-123.02803</u>
<u>16</u>	<u>37.75898</u>	<u>-123.01527</u>
<u>17</u>	<u>37.75267</u>	<u>-123.00303</u>
<u>18</u>	<u>37.74341</u>	<u>-122.99425</u>
<u>19</u>	<u>37.73634</u>	<u>-122.99017</u>
<u>20</u>	<u>37.73036</u>	<u>-122.97601</u>
<u>21</u>	<u>37.72042</u>	<u>-122.96548</u>
<u>22</u>	<u>37.70870</u>	<u>-122.95890</u>
<u>23</u>	<u>37.69737</u>	<u>-122.95720</u>
<u>24</u>	<u>37.68759</u>	<u>-122.95882</u>
<u>25</u>	<u>37.67768</u>	<u>-122.96469</u>
<u>26</u>	<u>37.66905</u>	<u>-122.97427</u>
<u>27</u>	<u>37.66352</u>	<u>-122.98478</u>
<u>28</u>	<u>37.66037</u>	<u>-122.99741</u>
<u>29</u>	<u>37.66029</u>	<u>-123.00991</u>
<u>30</u>	<u>37.66290</u>	<u>-123.02133</u>
<u>31</u>	<u>37.67102</u>	<u>-123.03830</u>
<u>32</u>	<u>37.67755</u>	<u>-123.04612</u>
<u>33</u>	<u>37.68844</u>	<u>-123.05334</u>
<u>34</u>	<u>37.69940</u>	<u>-123.05567</u>
<u>35</u>	<u>37.71127</u>	<u>-123.06858</u>
<u>36</u>	<u>37.72101</u>	<u>-123.07329</u>
<u>37</u>	<u>37.73167</u>	<u>-123.07399</u>
<u>38</u>	<u>37.73473</u>	<u>-123.07340</u>
<u>39</u>	<u>37.73074</u>	<u>-123.08620</u>
<u>40</u>	<u>37.73010</u>	<u>-123.09787</u>
<u>41</u>	<u>37.73265</u>	<u>-123.11296</u>
<u>42</u>	<u>37.73685</u>	<u>-123.12315</u>
<u>43</u>	<u>37.74273</u>	<u>-123.13124</u>
<u>44</u>	<u>37.74725</u>	<u>-123.13762</u>
<u>45</u>	<u>37.75467</u>	<u>-123.14466</u>
<u>46</u>	<u>37.76448</u>	<u>-123.14917</u>
<u>47</u>	<u>37.77670</u>	<u>-123.14954</u>

APPENDIX C TO SUBPART H OF PART 922 — NO-ANCHORING SEAGRASS
PROTECTION ZONES IN TOMALES BAY

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Zone 1: Zone 1 is an area of approximately 39.9 hectares offshore south of Millerton Point. The eastern boundary is a straight line that connects points 1 and 2 listed in the coordinate table below. The southern boundary is a straight line that connects points 2 and 3, the western boundary is a straight line that connects points 3 and 4 and the northern boundary is a straight line that connects

point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

<u>Zone 1 Point ID</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>38.10571</u>	<u>-122.84565</u>
<u>2</u>	<u>38.09888</u>	<u>-122.83603</u>
<u>3</u>	<u>38.09878</u>	<u>-122.84431</u>
<u>4</u>	<u>38.10514</u>	<u>-122.84904</u>
<u>5</u>	<u>same as 1</u>	<u>same as 1</u>

ZONE 2: Zone 2 is an area of approximately 50.3 hectares that begins just south of Marconi and extends approximately 3 kilometers south along the eastern shore of Tomales Bay. The eastern boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3. The western boundary is a series of straight lines that connect points 3 through 6 in sequence and then connects point 6 to point 1. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

<u>Zone 1 Point ID</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>38.14071</u>	<u>-122.87440</u>
<u>2</u>	<u>38.11386</u>	<u>-122.85851</u>
<u>3</u>	<u>38.11899</u>	<u>-122.86731</u>
<u>4</u>	<u>38.12563</u>	<u>-122.86480</u>
<u>5</u>	<u>38.12724</u>	<u>-122.86488</u>
<u>6</u>	<u>38.13326</u>	<u>-122.87178</u>
<u>7</u>	<u>Same as 1</u>	<u>Same as 1</u>

ZONE 3: Zone 3 is an area of approximately 4.6 hectares that begins just south of Marshall and extends approximately 1 kilometer south along the eastern shore of Tomales Bay. The eastern boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3, the western boundary is a straight line that connects point 3 to point 4, and the northern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

<u>Zone 3 Point ID</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>38.16031</u>	<u>-122.89442</u>
<u>2</u>	<u>38.15285</u>	<u>-122.88991</u>
<u>3</u>	<u>38.15250</u>	<u>-122.89042</u>
<u>4</u>	<u>38.15956</u>	<u>-122.89573</u>
<u>5</u>	<u>Same as 1</u>	<u>Same as 1</u>

ZONE 4: Zone 4 is an area of approximately 61.8 hectares that begins just north of Nicks Cove and extends approximately 5 kilometers south along the eastern shore of Tomales Bay to just south of Cypress Grove. The eastern boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3. The western boundary is a series of straight lines that connect points 3 through 9 in

sequence. The northern boundary is a straight line that connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

<u>Zone 4 Point ID</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>38.20073</u>	<u>-122.92181</u>
<u>2</u>	<u>38.16259</u>	<u>-122.89627</u>
<u>3</u>	<u>38.16227</u>	<u>-122.89650</u>
<u>4</u>	<u>38.16535</u>	<u>-122.90308</u>
<u>5</u>	<u>38.16869</u>	<u>-122.90475</u>
<u>6</u>	<u>38.17450</u>	<u>-122.90545</u>
<u>7</u>	<u>38.17919</u>	<u>-122.91021</u>
<u>8</u>	<u>38.18651</u>	<u>-122.91404</u>
<u>9</u>	<u>38.18881</u>	<u>-122.91740</u>
<u>10</u>	<u>Same as 1</u>	<u>Same as 1</u>

ZONE 5: Zone 5 is an area of approximately 461.4 hectares that begins east of Lawsons Landing and extends approximately 5 kilometers east and south along the eastern shore of Tomales Bay but excludes areas adjacent (approximately 600 meters) to the mouth of Walker Creek. The boundary follows the mean high water (MHW) mark from point 1 and trends in a southeast direction to point 2 listed in the coordinate table below. From point 2 the boundary trends westward in a straight line to point 3, then trends southward in a straight line to point 4 and then trends eastward in a straight line to point 5. The boundary follows the mean high water line from point 5 southward to point 6. The southern boundary is a straight line that connects point 6 to point 7. The eastern boundary is a series of straight lines that connect points 7 to 9 in sequence and then connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

<u>Zone 5 Point ID</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>38.23122</u>	<u>-122.96300</u>
<u>2</u>	<u>38.21599</u>	<u>-122.93749</u>
<u>3</u>	<u>38.20938</u>	<u>-122.94153</u>
<u>4</u>	<u>38.20366</u>	<u>-122.93246</u>
<u>5</u>	<u>38.20515</u>	<u>-122.92453</u>
<u>6</u>	<u>38.20073</u>	<u>-122.92181</u>
<u>7</u>	<u>38.19405</u>	<u>-122.93477</u>
<u>8</u>	<u>38.20436</u>	<u>-122.94305</u>
<u>9</u>	<u>38.21727</u>	<u>-122.96225</u>
<u>10</u>	<u>Same as 1</u>	<u>Same as 1</u>

ZONE 6: Zone 6 is an area of approximately 3.94 hectares in the vicinity of Indian Beach along the western shore of Tomales Bay. The western boundary follows the mean high water (MHW) line from point 1 northward to point 2 listed in the coordinate table below. The northern boundary is a straight line that connects point 2 to point 3. The eastern boundary is a straight line that connects point 3 to point 4. The southern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

<u>Zone 6 Point ID</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>38.13811</u>	<u>-122.89603</u>

<u>2</u>	<u>38.14040</u>	<u>-122.89676</u>
<u>3</u>	<u>38.14103</u>	<u>-122.89537</u>
<u>4</u>	<u>38.13919</u>	<u>-122.89391</u>
<u>5</u>	<u>Same as 1</u>	<u>Same as 1</u>

ZONE 7: Zone 7 is an area of approximately 32.16 hectares that begins just south of Pebble Beach and extends approximately 3 kilometers south along the western shore of Tomales Bay. The western boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The northern boundary is a straight line that connects point 2 to point 3. The eastern boundary is a series of straight lines that connect points 3 through 7 in sequence. The southern boundary is a straight line that connects point 7 to point 8. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

<u>Zone 7 Point ID</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>38.11034</u>	<u>-122.86544</u>
<u>2</u>	<u>38.13008</u>	<u>-122.88742</u>
<u>3</u>	<u>38.13067</u>	<u>-122.88620</u>
<u>4</u>	<u>38.12362</u>	<u>-122.87984</u>
<u>5</u>	<u>38.11916</u>	<u>-122.87491</u>
<u>6</u>	<u>38.11486</u>	<u>-122.86896</u>
<u>7</u>	<u>38.11096</u>	<u>-122.86468</u>
<u>8</u>	<u>Same as 1</u>	<u>Same as 1</u>

**GULF OF THE FARALLONES NMS
PROPOSED DESIGNATION DOC. (STRIKE-OUT)**

Proposed Revised Designation Document for

Designation of The Point Reyes/Farallon Islands
Gulf of the Farallones National Marine Sanctuary

Preamble

Under the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92-532 (the Act), the waters and submerged lands along the Coast of California north and south of Point Reyes Headlands, between Bodega Head and Rocky Point and surrounding the Farallon Islands, are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecological community.

Article I. Effect of Designation

Within the area designated in 1981 as The Point Reyes/ Farallon Islands Marine Sanctuary (the Sanctuary) described in Article II,2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that are either to be regulated on the effective date of final rulemaking or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

Article II,2. Description of the Area

The Sanctuary consists of an area of the waters and the submerged lands thereunder adjacent to the Coast of California of approximately 948,266 square nautical miles (nmi), extending seaward to a distance of 6 nmi from the mainland and 12 nmi from the Farallon Islands and Noonday Rock, and including the intervening waters and submerged lands. The precise boundaries are defined by regulation.

Article III. Characteristics of the Area That Give it Particular Value

The Sanctuary includes a rich and diverse marine ecosystem and a wide variety of marine habitats, including habitat for over 3620 species of marine mammals. Rookeries for over half of California's nesting marine bird and nesting areas for at least 12 of 16 known U.S. nesting marine bird species are found within the boundaries. Abundant fish and shellfish are also harvested in the Sanctuary.

Article IV. Scope of Regulation

Section 1. Activities Subject to Regulation

In order to protect the distinctive values of the Sanctuary, the following activities are subject to regulation, including prohibition may be regulated within the Sanctuary to the extent as may be necessary to ensure the management, protection and preservation of its marine features and the conservation, recreational, ecological, recreational, historical, cultural, archeological, scientific, educational, and aesthetic resources and qualities value of this area:

- a. Hydrocarbon operations.
- b. Discharging or depositing any substance within or from beyond the boundary of the Sanctuary.
- c. Dredging or alteration of, or construction on, the seabed Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary.
- d. Activities regarding cultural or historical resources
- e. Introducing or otherwise releasing from within or into the Sanctuary an introduced species.
- f. Taking or possessing any marine mammal, marine reptile, or bird within or above the Sanctuary except as permitted by the Marine Mammal Protection Act, Endangered Species Act and Migratory Bird Treaty Act.
- g. Attracting or approaching any animal.
- h. Operating a vessel (i.e., watercraft of any description) within the Sanctuary, including, but not limited to, anchoring or deserting.
- a. Navigation of vessels except fishing vessels or vessels traveling within a vessel traffic separation scheme or port access route designated by the Coast Guard outside the area 2 nmi from the Farallon Islands, Bolinas Lagoon or any Area of Biological Significance, other than that surrounding the Farallon Islands, established by the State of California prior to designation.
- a. Disturbing marine mammals and birds by overflights below 1000 feet.
- a. Removing or otherwise harming cultural or historical resources.

Section 2. Consistency with International Law. The regulations governing the activities listed in section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. Emergency Regulations. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition. Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated with the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5V. Relation to Other Regulatory Programs.

Section 1. Fishing and Waterfowl Hunting. The regulation of fishing, including fishing for shellfish and invertebrates, and waterfowl hunting, is not authorized under Article IV4. However, fishing vessels may be regulated with respect to discharges vessel operations in accordance with Article IV4, paragraph (b) section 1, paragraphs (b) and (h), and mariculture activities involving alterations or of or construction on of the seabed, or release of introduced species by mariculture activities not covered by valid lease from the State of California and in effect on the effective date of this regulation, can be regulated in accordance with Article IV4, section 1, paragraph (c) and (e). All regulatory programs pertaining to fishing, and to waterfowl hunting, including regulations promulgated under the California Fish and Game Code and Fishery Management Plans promulgated

under the Magnuson-Stevens Fishery Conservation and Management Act of 1976, 16 U.S.C §§ 1801 *et seq.*, will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV4.

The term “fishing”-as used in this article and in Article 4IV includes mariculture.

Section 2. Defense Activities. The regulation of activities listed in Article IV4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practicable.

Section 3. Other Programs. All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article IV4. The Sanctuary regulations will set forth any necessary certification procedures.

Article VI6. Alterations to this Designation

~~This Designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Regional Fishery Management Council, and approval by the President of the United States. The terms of designation, as defined under section 304 (a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.~~

MONTEREY BAY NMS PROPOSED RULE

Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. _____

RIN 0648-AT15

Monterey Bay National Marine Sanctuary Regulations

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of public availability of draft management plan/draft environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan, revised Designation Document, and revised regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary). Changes to the Designation Document include expanding the boundaries to include the Davidson Seamount, changing the scope of regulations to include possession of a Sanctuary historical resource outside of the Sanctuary, and introduction of introduced species.

The proposed regulations would revise and provide greater clarity to existing regulations. These revisions and clarifications include: replacing the term “seabed” with “submerged lands”; correcting inaccuracies in the coordinates and description of the Sanctuary’s seaward and shoreline boundaries; clarifying that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage; specifying that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to such discharge/deposit during the conduct of traditional fishing activities within the Sanctuary; revising the prohibition on possession of Sanctuary historical resources to apply both within and outside the Sanctuary; clarifying that the exceptions from the prohibition against altering the submerged lands within the Sanctuary only apply to the extent necessary to accomplish the excepted activities; expanding the existing prohibition on the attraction of white sharks in state waters to apply throughout the Sanctuary; clarifying that the prohibition against discharges/deposits applies to discharges/deposits both within and into the Sanctuary; clarifying that any discharge/deposit from bilge pumping must be clean (meaning not containing detectable levels of harmful matter as defined); clarifying that anchor wash and vessel generator discharge are excepted from the discharge/deposit prohibition; and revising the definition of motorized personal watercraft. Proposed changes to regulations also include new prohibitions on: releasing introduced species; discharging most matter from cruise ships; disturbance and take of Sanctuary resources on and above the Davidson Seamount; leaving harmful matter aboard a grounded or deserted vessel; and deserting a vessel aground, adrift, or at anchor within the Sanctuary. Proposed changes to the permit procedures would clarify and refine the permit issuance criteria.

DATES: Public hearings will be held as detailed in the SUPPLEMENTARY INFORMATION section.

Comments will be considered if received by [INSERT 90 DAYS FROM PUBLICATION DATE IN THE FEDERAL REGISTER], 2006.

ADDRESSES: Written comments should be sent by mail to: Brady Phillips, JMPR Management Plan Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by email to jointplancomments@noaa.gov, or by fax to (301) 713-0404. Copies of the DMP/DEIS are available from the same address and on the web at www.sanctuaries.nos.noaa.gov/jointplan. Comments can also be submitted to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Bizot, National Permit Coordinator, National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, Maryland 20910, by email to David.Bizot@noaa.gov, or by fax to 301-713-0404; and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Huff McGonigal, Environmental Policy Specialist, 831-647-4254 or huff.mcgonigal@noaa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434 et seq.) (NMSA), the National Marine Sanctuary Program (NMSP) has conducted a review of the management plan for Monterey Bay National Marine Sanctuary. The review has resulted in a proposed new management plan for the Sanctuary, some proposed revisions to existing regulations, and some proposed new regulations. The proposed new regulations include prohibitions on:

- discharging or depositing any matter from a cruise ship other than vessel engine cooling water, vessel generator cooling water, or anchor wash;
- releasing or otherwise introducing from within or into the Sanctuary an introduced species;
- disturbing or taking a Sanctuary resource below 3000 feet of the sea surface in the Davidson Seamount Management Zone;
- deserting a vessel aground, at anchor, or adrift within the Sanctuary; and
- leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary.

These measures would afford better protection to the nationally significant natural and historical resources of the MBNMS.

Existing regulations would also be revised to:

- replace the term “seabed” with “submerged lands”, the term used in the NMSA;
- correct inaccuracies in the coordinates and description of the Sanctuary’s seaward and shoreline boundaries;
- clarify that discharges/deposits allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices and that vessel operators are required to lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
- specify that the existing exception for discharging or depositing fish, fish parts, or chumming materials (bait) applies only to such discharge/deposits during the conduct of traditional fishing activities within the Sanctuary;
- make the prohibition on possession of Sanctuary historical resources apply both within and outside the Sanctuary;

- clarify that the exceptions from the prohibition against altering the submerged lands within the Sanctuary only apply to the extent necessary to accomplish the excepted activities;
- modify the definition of *Attract or Attracting* to apply to all animals;
- expand the existing prohibition on the attraction of white sharks in state waters to apply throughout the Sanctuary;
- clarify that the prohibition against discharges/deposits applies to discharges/deposits both within and into the Sanctuary;
- clarify that discharges/deposits resulting from vessel generator cooling water, anchor wash, and clean bilge water (meaning not containing detectable levels of harmful matter as defined) are excepted from the discharge/deposit prohibition;
- revise the definition of *motorized personal watercraft*; and
- clarify and refine the permit procedures to clarify required findings and considerations as well as remove outdated language regarding standard conditions.

The proposed new management plan for the Sanctuary contains a series of action plans that outline management, research, education, outreach, operational, and performance measurement activities that are planned for the next five years. The activities are designed to address specific issues facing the Sanctuary and, in doing so, help achieve the mandates of the NMSP and the Sanctuary's designation.

This document publishes the proposed new regulations and the proposed changes to existing regulations, publishes the text of the proposed Revised Designation Document for the Sanctuary, and announces the availability of the draft management plan and the draft environmental impact statement (DMP/DEIS). The existing MBNMS Designation Document was published in 1992 to establish the Sanctuary, and per the NMSA (16 U.S.C. 1434(a)(4)) describes the geographic area proposed to be included within the Sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The NMSP is proposing certain revisions to its Designation Document, which include changes to the description of the area, and several substantive changes to the Sanctuary's scope of regulations.

Because this proposed action includes changes to the Sanctuary's terms of designation, the NMSP has developed a DEIS pursuant to section 304(a)(2) of the NMSA, 16 U.S.C. 1434(a)(2), and consistent with and in fulfillment of the requirements of the National Environmental Policy Act of 1969.

Sanctuary Environment

The MBNMS is located offshore of California's central coast, adjacent to and south of the Gulf of the Farallones National Marine Sanctuary. It encompasses a shoreline length of approximately 268 miles between Marin in Marin County and Cambria in San Luis Obispo County and approximately 4,016 square nautical miles of ocean and coastal waters, and the submerged lands thereunder, extending an average distance of 30 miles from shore. Supporting some of the world's most diverse marine ecosystems, it is home to numerous mammals, seabirds, fishes, invertebrates, and plants in a remarkably productive coastal environment. The Sanctuary's natural resources include the nation's largest kelp forests, one of North America's largest underwater canyons, and the closest-to-shore deep ocean environment in the continental United States. The MBNMS was established for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area.

Proposed Revised Designation Document

The Designation Document for the Sanctuary contains the terms of designation as defined in the NMSA (16 U.S.C. 1434(a)(4)). NOAA is proposing certain changes to the Designation Document

for the MBNMS as part of this management plan review. Boundary coordinates in the revised Designation Document and in the Sanctuary regulations would also reflect minor technical changes and would be expressed by coordinates based on the North American Datum of 1983 (NAD 83).

The MBNMS Designation Document boundary description is proposed to be amended to include the Davidson Seamount Management Zone, a 585 square mile area defined by the geodetic lines connecting the coordinates provided in Appendix F to this subpart. The Davidson Seamount is located 75 miles to the southwest of Monterey, due west of San Simeon and is home to a diverse assemblage of deep water organisms. This highly diverse community includes many endemic species and fragile, long-lived cold-water corals and sponges.

NOAA proposes to amend the MBNMS Designation Document to update Article III, Characteristics of the Area that Give it Particular Value to, for example, discuss the Davidson Seamount Management Zone.

NOAA also proposes to modify the MBNMS Designation Document to authorize Sanctuary regulation of introducing or otherwise releasing introduced species. A priority issue identified during the management plan review was addressing the threat posed by introduced species. One of the recommended strategies for addressing this was to develop a regulation prohibiting such releases.

NOAA also proposes to modify the MBNMS Designation Document to authorize regulation of the possession of a Sanctuary historical resource wherever the resource is found. The existing designation document currently lists as subject to regulation "possessing within the Sanctuary a Sanctuary resource...". The NMSP would like to make clear that a prohibition against possession of Sanctuary historical resources would apply outside the Sanctuary boundaries (e.g., at a harbor).

The MBNMS Designation Document is also proposed to be modified to replace the term "seabed" with the term "submerged lands" to be consistent with terminology in the NMSA.

NOAA also proposes to delete Appendices I and II of the MBNMS Designation Document and refer to the site regulations for Sanctuary seaward boundaries and the location of four sites designated for disposal of dredged material. This will also delete outdated language related to study areas for dredged material disposal sites outside the MBNMS boundaries.

Last, minor punctuation improvements are proposed to be made to the MBNMS Designation Document.

PROPOSED REVISED DESIGNATION DOCUMENT FOR THE MONTEREY BAY NATIONAL MARINE SANCTUARY

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 et seq., Monterey Bay and its surrounding waters offshore of central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article II, are hereby designated as the Monterey Bay National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of

the types that either are to be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The MBNMS consists of two separate areas. (a) The first area consists of an area of approximately 4016 square nautical miles (nmi) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California. The northern terminus of the Sanctuary boundary is located along the southern boundary of the Gulf of the Farallones National Marine Sanctuary (GFNMS) beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follows the GFNMS boundary westward to a point approximately 29 NM offshore from Moss Beach in San Mateo County. The Sanctuary boundary then extends southward in a series of arcs, which generally follow the 500 fathom isobath, to a point approximately 27 nmi offshore of Cambria, in San Luis Obispo County. The Sanctuary boundary then extends eastward towards shore until it intersects the Mean High Water Line (MHWL) along the coast near Cambria. The Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. The shoreward Sanctuary boundary excludes a small area between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbor, and Moss Landing Harbor are all excluded from the Sanctuary shoreward from the points listed in Appendix A of the site regulations except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge, and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included within the Sanctuary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve. Exact coordinates for the seaward boundary and harbor exclusions are provided in Appendix A of the site regulations.

(b) The Davidson Seamount Management Zone (DSMZ) is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the DSMZ boundary are provided in Appendix F of the site regulations.

Article III. Characteristics of the Area That Give It Particular Value

The Monterey Bay area is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive ecosystem and a wide variety of marine habitat. The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This canyon system provides habitat for pelagic communities and, along with other distinct bathymetric features, may modify currents and act to enrich local waters through strong seasonal upwelling. Monterey Bay itself is a rare geological feature, as it is one of the few large embayments along the Pacific coast.

The Monterey Bay area has a highly diverse floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds, whales, otters and some seabird species are outstanding. The fish stocks, particularly in Monterey Bay, are abundant and the variety of crustaceans and other invertebrates is high.

In addition there are many direct and indirect human uses of the area. The most important economic activity directly dependent on the resources is commercial fishing, which has played an important role in the history of Monterey Bay and continues to be of great economic value.

The diverse resources of the Monterey Bay area are enjoyed by the residents of this area as well as numerous visitors. The population of Monterey and Santa Cruz counties is rapidly expanding and is based in large part on the attractiveness of the area's natural beauty. The high water quality and the resulting variety of biota and their proximity to shore is one of the prime reasons for the international renown of the area as a prime tourist location. The quality and abundance of the natural resources have attracted human beings from the earliest prehistoric times to the present and as a result the area contains significant historical, e.g., archaeological and paleontological, resources, such as Costanoan Indian midden deposits, aboriginal remains, and sunken ships and aircraft.

The biological and physical characteristics of the Monterey Bay area combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers. Twenty-six research and education facilities are found within the Monterey Bay area. These institutions are exceptional resources with a long history of research and large databases possessing a considerable amount of baseline information on the Bay and its resources. Extensive marine and coastal education and interpretive efforts complement Monterey Bay's many research activities. For example, the Monterey Bay Aquarium has attracted millions of visitors who have experienced the interpretive exhibits of the marine environment. Point Lobos Ecological Reserve, Elkhorn Slough National Estuarine Research Reserve, Long Marine Laboratory and Año Nuevo State Reserve all have excellent docent programs serving the public, and marine related programs for school groups and teachers.

As to Davidson Seamount, it is located offshore of California, seventy-five miles southwest of Monterey, due west of San Simeon, and is one of the largest known seamounts in U.S. waters. Davidson Seamount is twenty-six miles long and eight miles wide. From base to crest, Davidson Seamount is 7,480 feet tall; yet still 4,101 feet below the sea surface. Davidson Seamount has an atypical seamount shape, having northeast-trending ridges created by a type of volcanism only recently described. It last erupted about 12 million years ago. This large geographic feature was the first underwater formation to be characterized as a "seamount" and was named after the Coast and Geodetic Survey (forerunner to the National Ocean Service) scientist George Davidson. Davidson Seamount's geographical importance is due to its location in the California Current, which likely provides a larger flux of carbon (food) to the sessile organisms on the seamount surface relative to a majority of other seamounts in the Pacific and may have unique links to the nearby Partington and Monterey submarine canyons.

The surface water habitat of the Davidson Seamount hosts a variety of seabirds, marine mammals, and pelagic fishes, e.g., albatrosses, shearwaters, sperm whales, killer whales, albacore tuna, and ocean sunfish. Organisms in the midwater habitat have a patchy distribution, e.g., jellies and swimming worms, with marine snow, organic matter that continually "rains" down from the sea surface, providing an important food source for deep-sea animals. The seamount crest habitat is the most diverse of habitats in the Davidson Seamount area, including large gorgonian coral (e.g., *Paragorgia* sp.) forests, vast sponge fields (many undescribed species), crabs, deep-sea fishes, shrimp, and basket stars. The seamount slope habitat is composed of cobble and rocky areas interspersed with areas of ash and sediment, and hosts a diverse assemblage of sessile invertebrates and rare deep-sea fishes. The seamount base habitat is the interface between rocky outcrops and the flat, deep soft bottom habitat.

Davidson Seamount is home to previously undiscovered species and species assemblages, such as large patches of corals and sponges, where there is an opportunity to discover unique associations

between species and other ecological processes. The high biological diversity of these assemblages has not been found on other central California seamounts. Davidson Seamount's importance for conservation revolves around the endemism of seamount species, potential future harvest damage to coral and sponge assemblages, and the low resilience of these species. Abundant and large, fragile species (e.g., corals greater than eight feet tall, and at least 200 years old, as well as vast fields of sponges) and an apparently physically undisturbed seafloor appear relatively pristine.

Research cruises to the Davidson Seamount in the early 2000s have captivated the imagination of the public through international news, television productions, a new NOAA visitor center film, and popular websites. The well-developed education initiatives of the NMSP, one of the few NOAA programs mandated to develop education programs, provides an opportunity to educate the public about seamounts as well as cold water corals and sponges. This is a critical advantage of Davidson Seamount designation, as few other sanctuaries include deep-sea corals and seamounts, a necessity in conservation and addressing new public interest in these issues.

The 1992 Final Environmental Impact Statement/Management Plan [and 2006 Draft Environmental Impact Statement/Management Plan] provide more detail on the characteristics of the Monterey Bay and Davidson Seamount area that give it particular value.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the Sanctuary:

- a. Exploring for, developing, or producing oil, gas, or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores, or any other solid material or other matter of commercial value) within the Sanctuary;
- b. Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except dredged material deposited at disposal sites authorized prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation;
- c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except dredged material deposited at the authorized disposal sites described in Appendix D to the site regulations, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval;
- d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying, or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy, or cause the loss of, a marine mammal, sea turtle, seabird, historical resource, or other Sanctuary resource;
- e. Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary;
- f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected, or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;
- g. Possessing any Sanctuary historical resource;
- h. Flying a motorized aircraft above the Sanctuary;
- i. Operating a vessel (i.e., water craft of any description) within the Sanctuary;
- j. Aquaculture or kelp harvesting within the Sanctuary;

- k. Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act;
- l. Introducing or otherwise releasing from within or into the Sanctuary an introduced species.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal, State or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) the exploration for, development of or production of oil, gas, or minerals within the Sanctuary except for limited, small-scale jade collection in the Jade Cove area of the Sanctuary [defined as the area bounded by the 35.92222 N latitude parallel (coastal reference point: beach access stairway at South Sand Dollar Beach), the 35.88889 N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and the mean high tide line seaward to the 90 foot isobath (depth line)]; (2) the discharge of primary-treated sewage (except for regulation, pursuant to section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alterations to This Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.

[END OF DESIGNATION DOCUMENT]

Summary of the Proposed Regulatory Amendments

Introduced species in the marine and estuarine environment alter species composition, threaten the abundance and/or diversity of native marine species (especially threatened and endangered species), interfere with the ecosystem's function and disrupt commercial and recreational activities. Introduced species may cause local extinction of native species either by preying upon them directly or by outcompeting them for prey. For example, the European green crab, now found in Elkhorn Slough, both preys on the young of valuable species (such as Dungeness crab) and competes with them for

resources. Introduced species may cause changes in physical habitat structure. For example, burrows caused by the isopod *Sphaeroma quoyanum*, originally from New Zealand and Australia, are found in banks throughout the Elkhorn Slough, and may exacerbate the high rate of tidal erosion in the Slough. Introduced species pose a significant threat to the natural biological communities and ecological processes in the Monterey Bay National Marine Sanctuary and may have a particularly large impact on the Sanctuary's twenty-six threatened and endangered species.

Introduced species may become a new form of predator, competitor, disturber, parasite, or disease that can have devastating effects upon ecosystems. For example, introduced species impacts on native coastal marine species of the Sanctuary could include: replacement of a functionally similar native species through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated species; increased intra- or interspecies competition with native species; creation or alteration of original substrate and habitat; hybridization with native species; and direct or indirect toxicity (e.g., toxic diatoms). Changes in species interactions can lead to disrupted nutrient cycles and altered energy flows that ripple with unpredictable results through an entire ecosystem. Exotic species may also pose threats to endangered species, and native species diversity. A number of non-native species now found in the Monterey Bay region were introduced elsewhere on the west coast but have spread through, for example, hull-fouling and ballast water discharge. Introduced species are a major economic and environmental threat to the living resources and habitats of the MBNMS as well as the commercial and recreational uses that depend on these resources. Once established, introduced species can be extremely difficult, if not impossible, to eradicate. Introduced species have become increasingly common in recent decades, and the rate of invasions continues to accelerate at a rapid pace. Estuaries are particularly vulnerable to invasion; and large ports, such as San Francisco Bay, can support hundreds of introduced species with significant impacts to native ecosystems. Although there are numerous efforts underway at the international, federal and state levels to address the issue of introduced species, the existing management plan for the Monterey Bay National Marine Sanctuary does not include any specific discussion of introduced species.

The proposed regulatory changes would prohibit introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity. "Introduced species" is defined to mean: (1) a species (including but not limited to any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes. This prohibition is designed to help reduce the risk from introduced species, including their seeds, eggs, spores, and other biological material capable of propagating. The intent of the prohibition is to prevent injury to Sanctuary resources and qualities, to protect the biodiversity of the Sanctuary ecosystems, and to preserve the native functional aspects of the Sanctuary ecosystems, all of which are put at risk by introduced species. During consultations with the State of California, concern was expressed that striped bass would qualify as an introduced species and that an angler who catches and then releases a striped bass would be in violation of the proposed regulation. While prohibiting such activity was not the intent of the regulation, to address this concern, the regulation now exempts striped bass as the only introduced species for which there is an active fishery.

The proposed regulatory changes would also modify the existing definition of motorized personal watercraft (MPWC); this change is proposed to avoid disturbance and other injury of marine wildlife by MPWCs, minimize user conflicts between MPWC operators and other recreationalists, and continue to provide opportunities for MPWC use within the MBNMS. Implementing this modified definition would help fulfill the original intent of the regulation and its zoning restriction. No changes to the current prohibition or MPWC zones are proposed.

MPWC are small, fast, and highly maneuverable craft that possess unconventionally high thrust capability and horsepower relative to their size and weight. Their small size, shallow draft, instant thrust, and “quick reflex” enable them to operate closer to shore and in areas that would commonly pose a hazard to conventional craft operating at comparable speeds. Resources such as sea otters and seabirds are either unable to avoid these craft or are frequently alarmed enough to significantly modify their behavior such as cessation of feeding or abandonment of young. Tow-in surfing activity using MPWC has been increasing at many traditional surfing locations in the MBNMS, regardless of surf conditions. The MBNMS has received complaints by surfers, beachgoers, and coastal residents that the use of MPWC in traditional surfing areas has produced conflicts with other ocean users and has caused disturbance of wildlife. During the designation of the MBNMS, the operation of MPWC in nearshore areas was identified as an activity that should be prohibited to avoid such impacts.

The current regulation restricts MPWC to specific zones within the MBNMS. However, the current definition of MPWC does not cover all types of existing MPWC. Watercraft that are larger and can accommodate three or more persons are not subject to the regulations because they are not included in the current definition. The existing regulation therefore does not fully address the threat posed by MPWC to marine resources and the issue of user conflict. To address these concerns, changes are proposed to the current definition that would cover all categories of MPWC and that would therefore eliminate the loophole in the current regulation. The proposed changes would expand the definition of MPWC to address a broader range of watercraft that would be restricted.

The current definition of MPWC for the MBNMS at 15 CFR 922.131 states: “Motorized personal water craft means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, surf jets, miniature speed boats, air boats and hovercraft.”

The current definition is insufficient to meet NOAA’s original goal of restricting the operation of small, highly maneuverable watercraft within the boundaries of the MBNMS. It does not encompass the majority of MPWC operating within the MBNMS today because it is based upon outdated MPWC design characteristics of the early 1990s. Since 1992, MPWC manufacturers have built increasingly larger craft with 3+ passenger riding capacity or varied design characteristics that place these craft outside the current MBNMS regulatory definition. These newer craft effectively skirt the definition, yet they retain or exceed the performance capabilities of their predecessors that pose a threat to Sanctuary resources and qualities. The above MPWC definition is based solely upon static design characteristics that have rendered it obsolete and ineffective over time, and the definition needs a complete replacement.

NOAA has therefore developed a more flexible, integrated three-part definition for continued relevance, despite continuing MPWC design changes. Should a future MPWC design unexpectedly displace any one part of the definition, one or both of the remaining two parts would still apply to sustain the intent of the definition. Part 1 focuses on operating characteristics and is not constrained by hull design or propulsion unit specifications. Part 2 focuses on high-speed hull designs that shed water (e.g., Kawasaki Corporation’s Jet Ski line) and is not constrained by propulsion unit specifications or operating characteristics. Part 3 focuses on jet boats that share the same operating capabilities as craft that meet the definition under parts 1 and 2 but where passengers sit inside the craft. The new definition is intended to effectively identify all craft of concern without inadvertently restricting other watercraft. The new proposed definition states: “Motorized personal watercraft means (1) any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the conventional manner, where the operator

stands or sits inside the vessel; (2) any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.”

Though the vast majority of MPWC operated in the Sanctuary today are similar to Kawasaki's classic Jet Ski design, a variety of craft are currently marketed that are equally maneuverable at high speeds, with shallow drafts, and powerful thrust/weight ratios. One such innovation involves a remotely operated water-jet propulsion pod controlled via a tow line by a skier behind the pod. Water-jet propelled surf boards are also available. Small, highly maneuverable jet boats have also entered the market. These non-conventional watercraft designs demonstrate the creative variations in MPWC that warrant a more resilient regulatory definition.

Part 1 of the proposed definition is similar to current definitions of MPWC used by the Gulf of the Farallones and Florida Keys National Marine Sanctuaries, the National Park Service, and the State of California's Harbors and Navigation Code. However, it differs by omitting reference to a particular hull design, length, or propulsion system in order to prevent the definition from becoming obsolete over time due to the rapidly evolving MPWC design market. It also no longer focuses on vessels “capable of exceeding a speed of fifteen knots.” This language was difficult to enforce and did not sufficiently aid in encompassing those vessels of concern to the NMSP. A vessel's speed is also captured in other ways in the proposed definition. The new definition also identifies a wider variety of riding postures common to the unconventional vessel designs that pose a threat to Sanctuary resources and qualities. These threats arise because these design features increase the vessel's maneuverability and allow riders to enter shallow water zones and areas adjacent to small islands and off-shore rocks used by marine mammals and seabirds as breeding, nursing, and resting areas. Part 1 identifies the operating characteristics of most vessels of concern at the present time. However, part 1 alone does not reach all craft of concern. For this reason, parts 2 and 3 were included in the definition.

Part 2 utilizes an existing U.S. Coast Guard regulation to identify many existing and future vessel designs that pose a threat to Sanctuary resources and qualities. The Coast Guard requires special testing for most powered vessels under 20 feet in length. This is due to the unique stability and displacement characteristics of these vessels that affect passenger safety (33 CFR Part 183). The weight/size ratio of these small craft presents a higher risk of swamping, capsizing, sinking, and passenger dismount. The Coast Guard requires that the results of the vessel stability tests be printed on a capacity plate affixed to each vessel design for which the special testing is required (33 CFR Part 181). A key component of the Coast Guard's regulation is a stability test. To conduct this test, weight is systematically added to the outer hull until it tips to the waterline, allowing water to flood into the vessel. From such tests, computations can be made to determine the maximum safe passenger and cargo loading capacity for that vessel design.

Some high-speed unconventional vessels (e.g., jet bikes, hovercraft, air boats, and race boats) are designed without carrying spaces that hold water. In other words, their hull designs prevent flooding, because they do not have open hulls into which water will flow. Since this design feature makes it impossible to complete the tests required by 33 CFR Part 183, the manufacturers of such craft routinely seek and receive exemptions from these testing and labeling requirements.

With the exception of submarines, the “powered” surface vessel designs exempted pursuant to the Coast Guard regulations at 33 CFR Parts 181 and 183 (e.g., jet bikes, hovercraft, air boats, and race boats) possess two or more of the following characteristics: robust buoyancy, rapid acceleration, high maneuverability at speed, and shallow draft. These and associated design characteristics afford such

vessels unique access and operability within sensitive marine areas (e.g., marine mammal and seabird enclaves). This poses a threat to Sanctuary resources and qualities – the same threat that prompted regulatory restrictions on the operation of such hull designs within the MBNMS in 1992. NOAA’s rationale and authority to impose such restrictions were affirmed in *Personal Watercraft Industry Association, et al. v. Department of Commerce*, 48 F.3d 540 (D.C. Cir. 1995).

By referencing the Coast Guard regulations at 33 CFR Parts 181 and 183, NOAA can effectively and precisely identify various vessels of concern while avoiding an excessively lengthy definition for MPWC. Although part 2 of the definition includes some vessel designs already captured by part 1, it compensates for static aspects of part 1 that could result in a regulatory loophole due to rapidly evolving MPWC designs, as has happened with the current definition.

Parts 1 and 2 largely address problems caused by non-conventional hull designs, which allow the user to enter sensitive and important wildlife habitats. But they do not adequately address the emergence of small, conventional hulls powered by water jet propulsion systems. Jet propulsion systems give vessels many of the same operating characteristics and capabilities of the previously identified vessels of concern (e.g., rapid acceleration, high maneuverability at speed, and shallow draft). They therefore allow these vessels to operate in areas where wildlife is most frequently found. Part 3 was thus developed to include these small craft in the definition. Jet propulsion vessels that are longer than twenty feet do not generally possess these same operational characteristics and capabilities, and are thus excluded from the definition. Further, Coast Guard regulations often categorize small boats as less than 20 feet in length. NOAA has similarly adopted this standard to differentiate between smaller and larger jet-propelled vessels.

The proposed regulations would also clarify and modify the existing (1992) regulation prohibiting discharging or depositing any material or other matter. Clarifications include: the regulation applies to discharges/deposits from within or into the Sanctuary; the exception for fish, fish parts, or chumming materials (bait) applies only to such discharges/deposits made during the conduct of traditional fishing operations within the Sanctuary; and the exception for effluent discharges from marine sanitation devices applies only to operable Type I or II marine sanitation devices approved by the U.S. Coast Guard in accordance with the Federal Water Pollution Control Act. The existing exception for vessel wastes “generated by a marine sanitation device” was intended to prohibit the dumping of untreated sewage into the Sanctuary; the proposed modification to this exception makes express that such discharges are only allowed if generated by Type I or II marine sanitation devices (Type I and Type II marine sanitation devices treat wastes, but Type III marine sanitation devices do not). The proposed modification would also require vessel operators to lock all marine sanitation devices in a manner that prevents the discharge of untreated sewage. This requirement would aid in enforcement and compliance with Sanctuary regulations.

The proposed regulatory amendments would clarify that current exceptions to the prohibition on discharges/deposits from vessels for graywater and deck wash down must be biodegradable. The proposed changes would also clarify that discharges/deposits from vessel generator cooling water, anchor wash, and clean bilge water (meaning not containing detectable levels of harmful matter as defined) are excepted from the discharge/deposit prohibition.

The discharge/deposit of oily wastes from bilge pumping is currently prohibited. This prohibition is proposed to be replaced by language requiring that all bilge discharges/deposits be clean, meaning not containing detectable levels of harmful matter as defined. For purposes of determining detectable levels of oil in bilge discharges/deposits, a detectable level of oil is interpreted here to include any waste that produces a visible sheen. This change would provide clarification regarding permitted contents of bilge water discharges/deposits.

The discharge/deposit of ballast water is not covered by any exception to the discharge/deposit prohibition, and therefore is prohibited. The discharge/deposit of ballast water is a common source of introduced species and will remain prohibited.

The proposed discharge/deposit regulations distinguish cruise ship discharges/deposits from discharges/deposits of other vessels. A “cruise ship” is proposed to be defined to mean a vessel with 250 or more passenger berths for hire. Although there are exceptions to the general vessel discharge/deposit regulations for certain matter, the only discharges/deposits proposed to be permitted from a cruise ship are vessel engine cooling water, generator cooling water, and anchor wash. These discharges/deposits are also exceptions in the general vessel discharge/deposit regulations. The purpose of regulating cruise ship discharges/deposits is to reduce adverse effects on the marine environment as a result of pollutant discharges/deposits. A wide array of pollutants, such as sewage and graywater, are discharged/deposited in larger volumes from cruise ships than other ships due to their sheer size and passenger capacity. The existing and proposed general vessel discharge/deposit regulations except biodegradable effluent generated by a Type I or II marine sanitation device, but the large volumes of such discharged effluent associated with cruise ships may not adequately disperse to avoid harm to marine resources. Additionally, the volume of biodegradable material from a cruise ship resulting from deck washdown greatly exceeds the volumes associated with typical vessels used in the Sanctuary. Although several laws and regulations partly address these issues, there is a need for a more comprehensive prohibition on cruise ship discharges/deposits within the Sanctuary.

The proposed regulatory changes would extend the existing regulation prohibiting possession of a Sanctuary historical resource to prohibit possession either within or outside the Sanctuary. The proposed clarification would increase protection of Sanctuary resources by making it illegal to possess historical resources in any geographic location (e.g., harbors).

The proposed regulatory changes would also modify the existing prohibition against altering the seabed of the Sanctuary. The term “seabed” would be replaced with “submerged lands” to be consistent with the NMSA. Additionally, the submerged lands in estuarine areas within the Sanctuary such as Elkhorn Slough are not accurately described as “seabed”. The proposed regulatory changes would also clarify that activities currently excepted from the prohibition against altering the submerged lands or constructing, placing or abandoning any matter on them are only excepted to the extent that disturbing the submerged lands is necessary to their completion. There are no exceptions to the prohibition against disturbing the submerged lands within the DSMZ, other than impacts that are incidental and necessary to the conduct of traditional fishing operations. Please note, however, that fishing in the DSMZ below 3000 feet is prohibited under 50 CFR 660 (fisheries off West Coast states and in the Western Pacific).

To address concerns regarding the threats to the marine environment from deserted vessels, the NMSP is proposing a regulation to minimize this threat. The proposed regulation would prohibit deserting a vessel aground, at anchor, or adrift in the Sanctuary. This prohibition would help reduce or avoid injury to Sanctuary resources and qualities from vessels impacting shoreline habitats and potentially discharging harmful matter. To clarify which vessels would be considered deserted, the NMSP is also proposing to define “deserting” as:

“a) leaving a vessel aground or adrift: (1) without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification; (2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or (3) when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or

b) leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner."

The proposed changes include an additional regulation that would prohibit leaving harmful matter aboard a grounded or deserted vessel. Once a vessel is grounded there is a high risk of discharge/deposit of harmful matter into the marine environment. Harmful matter aboard a deserted vessel also poses a threat to Sanctuary resources and water quality. Currently, preemptive removal of harmful substances (e.g., motor oil) is not required by regulation. This prohibition would help reduce or avoid harm to Sanctuary resources and qualities from hazardous or other harmful matter from a vessel.

NOAA proposes to modify the regulations to define and incorporate the DSMZ into the Sanctuary, and establish a unique set of prohibitions for that area. The Davidson Seamount is located outside of MBNMS, 120 kilometers (75 miles) to the southwest of Monterey, and is one of the largest known seamounts in U.S. waters. It is 42 kilometers (26 miles) long and 13 kilometers (8 miles) wide. From base to crest, Davidson Seamount is 2,400 meters (7,480 feet) tall, yet it is still 1,260 meters (4,101 feet) below the sea surface. Threats from fishing are relatively remote; the top of the seamount is too deep for most fish trawling technology. However, future fishing efforts could target the seamount.

The NMSP has determined that the Davidson Seamount requires protection from the take or other injury to benthic organisms or those organisms living near the sea floor because of the seamount's special ecological and fragile qualities and potential future threats that could adversely affect these qualities. Therefore, the Davidson Seamount is proposed for inclusion in MBNMS.

The NMSP consulted with the Pacific Fishery Management Council (PFMC) and the National Marine Fisheries Service (NMFS) on the most appropriate level of resource protection for the Davidson Seamount and the various means for achieving it. This consultation coincided with the culmination of the PFMC's separate, longer-term efforts to identify and protect Essential Fish Habitat (EFH) on the West coast. PFMC unanimously supported the incorporation of the seamount into the Monterey Bay National Marine Sanctuary, but recommended that protection from fishing impacts be achieved by including Davidson Seamount as one of the areas being considered for protection as EFH under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 50 CFR part 660. NMFS subsequently approved and implemented this recommendation by designating Davidson Seamount as EFH and prohibiting all fishing below 3000 feet in the area proposed to be included in the MBNMS.

A square area around the seamount would be incorporated into the Sanctuary approximately 25 nautical miles (46 kilometers; 29 miles) per side. The incorporated area would include the water and submerged lands thereunder. The proposed regulation would prohibit moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 3,000 feet below the sea surface within the DSMZ. It would also prohibit possessing any Sanctuary resource the source of which is more than 3,000 feet below the sea surface within the DSMZ. These prohibitions would not apply to commercial and recreational fishing below 3000 feet within the DSMZ conducted pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific), or possession of fish resulting from commercial and recreational fishing below 3000 feet within the DSMZ conducted pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific). The Sanctuary regulation does, however, prohibit resource extraction conducted for research purposes, as research extraction is not within the scope of the Magnuson-Stevens prohibition. As mentioned above, NOAA Fisheries, under the Magnuson-Stevens Act, has designated this area as EFH and prohibited fishing conducted

pursuant to 50 CFR part 660 below 3000 feet. In practical terms, there would be no difference between the prohibition of fishing below 3000 feet pursuant to the Magnuson-Stevens Act and protection of these same resources by applying the prohibition in this proposed rule under the National Marine Sanctuaries Act to the same fishing activity.

By incorporating the seamount into the MBNMS, its resources would be protected and opportunities would arise for a better understanding of the seamount.

White sharks have experienced harassment from cage diving operations, filming, and other wildlife watching operations. MBNMS regulations currently prohibit white shark attraction activities within specific areas of the Sanctuary, including the area out to the seaward limit of state waters (three miles from the coastline). The proposed changes to the regulation would extend this prohibition to the entire Sanctuary. The purpose of this prohibition is to protect white sharks from intrusive activities during their critical feeding life-cycle in all areas of the Sanctuary. The prohibition would avoid potential user conflicts between researchers and adventure tourism and would prevent intervention with feeding behavior of white sharks. This regulation is not expected or intended to impact any current fishing operations within the MBNMS. In addition to this prohibition, the regulatory definition of “attract or attracting” is proposed to be clarified to expressly include “decoys” as an attraction mechanism that would be prohibited and, while the scope of the regulation would only apply to white sharks, to be modified so as to apply to all animals for the purpose of being consistent with definitions for other national marine sanctuaries.

The proposed regulations would define and recognize the location of pre-existing dredged material disposal site SF-12. Definition of the SF-12 site is needed to clarify its exact location and to allow disposal of dredged material to occur at the head of the Monterey Canyon. This location would allow sediment flow into the Monterey Canyon, as originally intended. The location of dredged material disposal site SF-12 has been described inconsistently, which has led to confusion about the area designated for disposal of dredged material off of Moss Landing. Defining and codifying the area of disposal for SF-12 in MBNMS’s regulations would provide exact coordinates and eliminate multiple descriptions of various points of disposal, while ensuring that the definition is consistent with the original intent of the project. No increase in the volume of dredged material is a part of this action. The U.S. Army Corps of Engineers and Environmental Protection Agency approved this change in location in early 2006. The proposed regulations would also incorporate the coordinates of dredged material disposal site SF-14. Also, Santa Cruz and Monterey Harbors have identified additional dredged material disposal sites that were in use prior to MBNMS designation. These sites were not recognized at the time of designation. The proposed regulations would codify these areas and would provide exact coordinates for the disposal areas, and thereby formally recognize historic sites used prior to the designation of MBNMS.

The proposed changes to the Sanctuary regulations also include grammatical and technical changes to the permitting procedures section to remove extraneous language concerning standard permit conditions and to add clarity to the necessary findings and considerations for issuance of a permit. The proposed changes also include technical changes to the Sanctuary boundaries, which are referenced in Appendix A to the proposed regulations below. With the exception of adding Davidson Seamount, the minor changes are for purposes of clarifying existing boundaries.

Public Hearings

NOAA is publishing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Management Plan/Draft Environmental Impact Statement (DMP/DEIS). Public hearings will be held as detailed below:

- 1) November 29, 2006, 6:30 p.m. at the Cambria Pines Lodge, 2905 Burton Drive, Cambria, CA 93428.
- 2) November 29, 2006, 6:30 p.m. at the Bodega Marine Laboratory, 2099 Westside Road, Bodega Bay, CA 94923.
- 3) November 30, 2006, 6:30 p.m. at the Monterey Conference Center, One Portola Plaza, Monterey, CA 93940.
- 4) November 30, 2006, 6:30 p.m. at the Dance Palace Community Center, 503 B Street, Point Reyes Station, CA 94956.
- 5) December 5, 2006, 6:30 p.m. at the University of California Santa Cruz Inn and Conference Center, 611 Ocean Street, Santa Cruz, CA 95060.
- 6) December 5, 2006, 6:30 p.m. at the Fort Mason Center, Firehouse (NE corner of Center), San Francisco, CA 94123
- 7) December 6, 2006, 6:30 p.m. at the Community United Methodist Church, 777 Miramontes Street, Half Moon Bay, CA 94019.

Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the NMSA (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed for modifying any term of designation. In particular, section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives, the Committee on Commerce, Science, and Transportation of the United States Senate and the Governor of California, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (or in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required documents have been submitted to the specified Congressional Committees.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA (16 U.S.C. 1434) requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that the DEIS be made available to the public. NOAA has prepared a Draft Management Plan (DMP)/DEIS on the proposal and copies are available at the address and website listed in the Address section of this proposed rule. Responses to comments received on the DMP/DEIS will be published in the FMP/FEIS and preamble to the final rule.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action falls within the definition of "policies that have federalism implications" within the meaning of Executive Order 13132. The proposed changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Executive Order, the NMSP consulted with a number of entities within the State who participated in development of the proposed rule, including but not limited to, the California Department of Boating and Waterways, the California State Lands Commission, the California Department of Fish and Game, and the California Resources Agency.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Based primarily on recent socioeconomic studies, and on-site surveys of visitor use, NMSP has identified the following small businesses and small organizations as defined by the Regulatory Flexibility Act. Small business concerns operating within the Sanctuary include over 500 commercial fishing operations, more than 30 consumptive recreational charter businesses, over 30 non-consumptive recreational charter businesses, approximately 3 motorized personal watercraft businesses, and approximately 10 marine salvage companies.

Small organizations operating within the Sanctuary include non-governmental organizations (NGOs) and/or non-profit organizations (NPOs) dedicated to environmental education, research, restoration, and conservation concerning marine and maritime heritage resources. There are approximately 50 small organizations active in the Sanctuary including non-profit organizations (NPOs) involved in education, research, restoration, and conservation activities. Cambria, Carmel-by-the-Sea, Pacific Grove, City of Monterey, City of Seaside, Del Rey Oaks, Marina, Castroville, Pajaro, Soquel, Capitola, Rio Del Mar, Aptos, Pacifica, Half Moon Bay, San Mateo County Harbor District, Santa Cruz Port District and Moss Landing Harbor District would qualify as “small governmental jurisdictions” directly adjacent to the Sanctuary.

The proposed prohibition on possession of Sanctuary historical resources outside of Sanctuary boundaries is not expected to result in a significant adverse impact to current small entity operations within the Sanctuary. The relevant activities of those small entities whose operations may involve the incidental take of Sanctuary historical resources, i.e., traditional fishing operations, aquaculture, and kelp harvesting, would remain excepted from this regulation.

The proposed prohibition on introducing or otherwise releasing from within or into the Sanctuary an introduced species would be applicable to all small entity operations but is not expected to significantly adversely impact these operations. The introduction or other release of introduced species is not part of the business or operational practices associated with any of the identified small entities; for those small entities whose operational practices may include catch and release of striped bass (*Morone saxatilis*), (i.e., consumptive recreational charter business), an exception has been provided for striped bass released during catch and release fishing activity. By prohibiting such introductions, indirect benefits may result for certain small entities since their activities could potentially be negatively impacted by the spread of introduced species.

None of the small entities conducting activities within the Sanctuary are expected to be adversely impacted by replacing “seabed” with “submerged lands”. Similarly, proposed corrected inaccuracies in and clarifications to the Sanctuary’s boundary coordinates would not introduce any new regulations or requirements that would adversely impact any of the small entities operating within the Sanctuary.

The proposed modification to the Sanctuary’s discharge regulation clarifying that discharges allowed from marine sanitation devices apply only to Type I and Type II marine sanitation devices is applicable to all small entities that operate boats in the Sanctuary and would require that all vessels lock their marine sanitation devices in such a way as to prevent discharge of untreated sewage. This change would merely clarify the original intent of the Sanctuary’s discharge regulation, which is that raw sewage not be discharged from vessels into the Sanctuary, but rather must first be treated by a marine sanitation device. The requirement to lock marine sanitation devices would facilitate enforcement and compliance. To the extent that this clarification might affect customary, though

illegal, sewage discharge practices of some vessel-based small entity operations not using Type I or Type II marine sanitation devices, the adverse affect on those activities is expected to be less than significant. Additionally, commercial fishing, consumptive and non-consumptive charter businesses, and non-governmental organizations may receive indirect benefits from the clarification of this prohibition on release of raw sewage, especially as it might pertain to preventing large volume discharges from larger vessels, since it may contribute to sustaining favorable environmental quality in their area of operation.

The proposed prohibition on discharge from cruise ships would have no adverse impacts on any current small entity operations. The Small Business Administration defines the threshold for a “Scenic and Sightseeing Transportation, Water” small business as an entity that has average annual receipts of \$6.5 million per year or less (NAICS 487210). “Cruise ship” is defined by the Sanctuary to mean a vessel with 250 or more passenger berths for hire. All of the cruise ship entities that operate vessels in the Sanctuary with more than 250 passenger berths are considered large entities. Additionally, cruise ships would not be prevented from operating in the Sanctuary, as indicated by the exception for “vessel engine cooling water, vessel generator cooling water, and anchor wash”. All other discharge/deposit matter must be disposed of beyond the Sanctuary boundary, provided that it does not enter the Sanctuary and injure a Sanctuary resource.

The proposed prohibition on deserting a vessel aground, at anchor, or adrift would not have a significant adverse impact on small entities, as doing so is not an aspect of operation and as such the adverse impact to small entities would be less than significant. Indirect beneficial effects from this prohibition may result for those small entities, such as commercial fishing and recreational charter businesses that depend upon a healthy nearshore marine environment that is not subjected to vessel groundings, hazardous spills, and wildlife disturbance risks that grounded vessels can pose.

The proposed modification to the Sanctuary’s motorized personal watercraft (MPWC) regulation’s current definition would cover all categories of MPWC and would eliminate the existing loophole in the current regulations. The proposed change would expand the definition of MPWC to address a broader range of watercraft that would be restricted. Implementing this modified definition would help fulfill the original intent of the regulation and its zoning restrictions. The proposed modification would not have a significant adverse impact on small businesses directly involved in MPWC services. The majority of the MPWC industry is geared toward lake and river based recreation. A less than significant portion of the MPWC industry involves general MPWC use in the ocean waters of the MBNMS. No small businesses are directly linked with MPWC use in the MBNMS. While approximately 3 MPWC dealers and rental businesses operate in the greater MBNMS area, none are specifically targeting customers intending to use the craft in marine waters. One MPWC safety school based near Los Angeles operates a portion of its business within the MBNMS; however, the majority of the instruction takes place outside of the MBNMS.

The proposed prohibition of moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 3,000 feet below the sea surface in the Davidson Seamount Management Zone would not impact small businesses operating in the MBNMS; nor would the parallel possession regulation. The small entities most likely to be affected by this prohibition could be small fishing entities; however, there is currently no fishing that occurs below 3000 feet in the DSMZ. Additionally, these entities would not be impacted because the prohibition on fishing at greater than 3000 feet in the DSMZ is already accomplished through Essential Fish Habitat regulations under the Magnuson-Stevens Act. For persons wishing to conduct research activities affected by this prohibition, a permit could be issued, if appropriate, to conduct the activity.

The proposed change to the regulation that currently prohibits white shark attraction activities within a specific area of the Sanctuary, i.e., the area out to the seaward limit of state waters (three miles from the coastline), would extend this prohibition to the entire Sanctuary. No adventure tourism related small businesses currently attract white sharks in the MBNMS, so there would be no impact to small businesses.

The proposed regulatory amendments that clarify current exceptions to the prohibition on discharges/deposits from vessels for graywater and deck wash down must be biodegradable would not significantly impact small businesses. Biodegradable cleaning materials are generally no more costly than non-biodegradable cleaning materials. Biodegradable graywater is excepted for vessels other than cruise ships, which are not small businesses. Deck washdowns can still occur; however, the cleaning materials must also be biodegradable. Additionally, the proposed changes clarifying that vessel generator cooling water, clean bilge water, and anchor wash are excepted from the prohibition would not impact small businesses. This is only a clarification of the status quo.

The discharge of chum for the purpose of attracting white sharks would be prohibited but as discussed, there would be no significant impact on small business entities as no adventure tourism businesses currently attract white sharks in the MBNMS. The use of chum incidental and necessary to fishing is exempt from the discharge prohibition and would therefore not result in economic impacts.

The prohibition against leaving harmful matter on a grounded or deserted vessel would not have a significant adverse impact on small entities, as doing so is not an aspect of operation; as such the adverse impact to small entities would be less than significant. Indirect beneficial effects from this prohibition may result for those small entities, such as commercial fishing and recreational charter businesses that depend upon a healthy nearshore marine environment that is not subjected to the discharge of harmful matter from grounded or deserted vessels.

Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Paperwork Reduction Act

This proposed rule involves an existing information collection requirement previously approved by OMB (OMB# 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed rule will not require any change to the currently approved OMB approval and would not result in any change in the public burden in applying for and complying with NMSP permitting requirements.

The public reporting burden for these permit application requirements is estimated to average 1.00 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to David Bizot, National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by email to David.Bizot@noaa.gov, by fax to (301) 713-0404; or by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

The proposed revised permit regulations would require the Director of the NMSP to consider the proposed activity for which a permit application has been received. The proposed modifications to the permit procedures and criteria (15 CFR 922.133) would further refine current requirements and procedures of the general National Marine Sanctuary Program regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications

found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648-0141). The revised permit regulations would add language about: the qualifications, finances, and proposed methods of the applicant; the compatibility of the proposed method with the value of the Sanctuary and the primary objective of protection of Sanctuary resources and qualities; the necessity of the proposed activity; and the reasonably expected end value of the proposed activity.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

In this proposed rule, NOAA is publishing in its entirety 15 CFR Part 922, Subpart M, as it would read with the amendments described above. Those amendments are the subject of this proposed rule and request for comments. NOAA's publishing of the entire body of regulations specifically governing the MBNMS, showing the proposed changes, is meant to facilitate the reader's understanding of the regulations and better inform public comments.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Boats and Boating safety, Coastal zone, Education, Environmental protection, Fish, Harbors, Marine mammals, Marine pollution, Marine resources, Marine safety, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research, Water pollution control, Water resources, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429
Marine Sanctuary Program)

John H. Dunnigan	Date
Assistant Administrator for	
Ocean Services and Coastal Zone Management	

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. The regulations for MBNMS (15 CFR part 922, Subpart M) are amended to read as follows:

Subpart M—Monterey Bay National Marine Sanctuary

§ 922.130 Boundary

§ 922.131 Definitions

§ 922.132 Prohibited or otherwise regulated activities

§ 922.133 Permit procedures and criteria

§ 922.134 Notification and review

Appendix A to Subpart M of Part 922 – Monterey Bay National Marine Sanctuary Boundary Coordinates

Appendix B to Subpart M of Part 922 – Zones Within the Sanctuary Where Overflights Below 1000 Feet are Prohibited

Appendix C to Subpart M of Part 922 – Dredged Material Disposal Sites Within the Sanctuary

Appendix D to Subpart M of Part 922 – Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

Appendix E to Subpart M of Part 922 – Motorized Personal Watercraft Zones and Access Routes Within the Sanctuary

Appendix F to Subpart M of Part 922 – Davidson Seamount Management Zone

Section 922.130 Boundary.

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. (a) The first area consists of an area of approximately 4016 square nautical miles (nmi) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California. The northern terminus of the Sanctuary boundary is located along the southern boundary of the Gulf of the Farallones National Marine Sanctuary (GFNMS) beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follows the GFNMS boundary westward to a point approximately 29 nmi offshore from Moss Beach in San Mateo County. The Sanctuary boundary then extends southward in a series of arcs, which generally follow the 500 fathom isobath, to a point approximately 27 nmi offshore of Cambria, in San Luis Obispo County. The Sanctuary boundary then extends eastward towards shore until it intersects the Mean High Water Line (MHWL) along the coast near Cambria. The Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. The shoreward Sanctuary boundary excludes a small area between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbor, and Moss Landing Harbor are all excluded from the Sanctuary shoreward from the points listed in Appendix A except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge, and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included within the Sanctuary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve. Exact coordinates for the seaward boundary and harbor exclusions are provided in Appendix A to this subpart.

(b) The Davidson Seamount Management Zone is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the DSMZ boundary are provided in Appendix F to this subpart.

Section 922.131 Definitions.

In addition to those definitions found at 15 CFR 922.3, the following definitions apply to this subpart:

Attract or attracting means the conduct of any activity that lures or may lure any animal by using food, bait, chum, dyes, decoys, acoustics, or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to 15 CFR 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry

bar, or abalone iron). Pneumatic, mechanical, electrical, hydraulic, or explosive tools are, therefore, examples of what does not meet this definition.

Motorized personal watercraft (MPWC) means (1) any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel; (2) any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

Harmful matter means any substance, or combination of substances, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

Deserting means:

a) leaving a vessel aground or adrift:

(1) without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification;

(2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or

(3) when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or

b) leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Cruise ship means a vessel with 250 or more passenger berths for hire.

Introduced species means: (1) A species (including but not limited to any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

The Davidson Seamount Management Zone means the area bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, and consists of approximately 585 square nmi of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the DSMZ boundary are provided in Appendix F to this subpart.

Section 922.132 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (e) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1)

Exploring for, developing, or producing oil, gas, or minerals within the Sanctuary, except: jade may be collected (meaning removed) from the area bounded by the 35.92222 N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach), the 35.88889 N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and from the mean high tide line seaward to the 90-foot isobath (depth line) (the "authorized area") *provided that:*

(i) Only jade already loose from the submerged lands of the Sanctuary may be collected;

- (ii) No tool may be used to collect jade except:
 - (A) A hand tool (as defined at 15 CFR 922.131) to maneuver or lift the jade or scratch the surface of a stone as necessary to determine if it is jade;
 - (B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or
 - (C) A vessel (except for motorized personal watercraft) (see paragraph (a)(7) of this section) to provide access to the authorized area;
- (iii) Each person may collect only what that person individually carries; and
- (iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii) of this section, any person may apply for a permit to collect such a loose piece by following the procedures in 15 CFR 922.133.

(2)

- (i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter, except:
 - (A) Fish, fish parts, chumming materials, or bait used in or resulting from traditional fishing operations within the Sanctuary, provided that such discharge or deposit is during the conduct of traditional fishing operations within the Sanctuary;
 - (B) Biodegradable effluent incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;
 - (C) Biodegradable vessel deck wash down, vessel engine cooling water, vessel generator cooling water, anchor wash, clean bilge water (meaning not containing detectable levels of harmful matter as defined), or graywater as defined by section 312 of the FWPCA that is biodegradable;
 - (D) Vessel engine or generator exhaust; or
 - (E) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation (January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993. Authorized disposal sites within the Sanctuary are described in Appendix C.
- (ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except vessel engine cooling water, vessel generator cooling water, or anchor wash.
- (iii) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in Appendix D to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(3)

Possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure, a Sanctuary historical resource. This prohibition does not apply to possession, moving, removing, or injury resulting incidentally from kelp harvesting, aquaculture, or traditional fishing operations.

(4)

Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental and necessary to:

- (i) Conduct traditional fishing operations;
- (ii) Anchor a vessel;
- (iii) Conduct aquaculture or kelp harvesting;

- (iv) Install an authorized navigational aid;
- (v) Conduct harbor maintenance in an area necessarily associated with a Federal Project in existence on January 1, 1993, including dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters and jetties;
- (vi) Construct, repair, replace, or rehabilitate a dock or pier; or
- (vii) Collect jade pursuant to paragraph (a)(1) of this section, provided that there is no constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary.

The exceptions listed in subparagraphs (a)(4)(ii) through (a)(4)(vii) of this section do not apply within the Davidson Seamount Management Zone.

(5)
Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as expressly authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(6)
Flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1,000 feet above any of the four zones within the Sanctuary described in Appendix B to this subpart.

(7)
Operating motorized personal watercraft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in Appendix E to this subpart.

(8)
Possessing within the Sanctuary (regardless of where taken, moved, or removed from), any marine mammal, sea turtle, or bird, except as authorized under the MMPA, ESA, MBTA, under any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(9)
Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(10)
Leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary.

(11)
(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to fishing below 3000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).
(ii) Possessing any Sanctuary resource the source of which is more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to possession of fish resulting from fishing below 3000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).

(12)

Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(13)

Attracting any white shark within the Sanctuary.

(14)

Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b)

The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to an activity necessary to respond to an emergency threatening life, property, or the environment.

(c)

(1)

All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a) (2) through (12) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, CA 93940.) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (12) of this section by the Director after consultation between the Director and the Department of Defense.

(2) In the event of destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an incident, including but not limited to discharges, deposits, and groundings, caused by a Department of Defense activity, the Department of Defense, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, and paragraphs (a)(2) through (11) and (a)(13) of this section, do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(2) through (a)(8) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals, and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under 15 CFR 922.48 and or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development, or production of

oil, gas, or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to 15 CFR 922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

Section 922.133 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by sec. 922.132(a)(1) as it pertains to jade collection in the Sanctuary and sec. 922.132(a)(2) through (11), or sec. (a)(13), if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a permit issued under this section and 15 CFR 922.48.

(b) The Director, at his or her sole discretion, may issue a permit, subject to terms and conditions as he or she deems appropriate, to conduct an activity prohibited by sec. 922.132(a)(1) as it pertains to jade collection in the Sanctuary and sec. 922.132(a)(2) through (11), or sec. (a)(13), if the Director finds that the activity will have at most short-term and negligible adverse effects on Sanctuary resources and qualities and:

- (1) Is research designed to further understanding of Sanctuary resources and qualities;
- (2) Will further the educational, natural, or historical value of the Sanctuary;
- (3) Will further salvage or recovery operations within or near the Sanctuary in connection with a recent air or marine casualty;
- (4) Will assist in managing the Sanctuary;
- (5) Will further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California; or
- (6) Will allow the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove areas under sec. 922.132(a)(1)(iv).

(c) In deciding whether to issue a permit, the Director shall consider such factors as:

- (1) Will the activity be conducted by an applicant that is professionally qualified to conduct and complete the activity;
- (2) Will the activity be conducted by an applicant with adequate financial resources available to conduct and complete the activity;
- (3) Is the activity proposed for no longer than necessary to achieve its stated purpose;
- (4) Must the activity be conducted within the Sanctuary;
- (5) Will the activity be conducted using methods and procedures that are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;
- (6) Will the activity be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary, or cumulative effects of the activity, and the duration of such effects;
- (7) Will the activity be conducted in a manner compatible with the value of the Sanctuary as a source of recreation and as a source of educational and scientific information, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary and the duration of such effects; and
- (8) Does the reasonably expected end value of the activity to the furtherance of the Sanctuary goals and objectives outweigh any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity.

For jade collection, preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) Applications.

(1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, CA 93940.

(2) In addition to the information listed in 15 CFR 922.48(b), all applications must include information the Director needs to make the findings in paragraph (b) of this section and information to be considered by the Director pursuant to paragraph (c) of this section.

(e) In addition to any other terms and conditions that the Director deems appropriate, a permit issued pursuant to this section must require that the permittee agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

Section 922.134 Notification and review.

(a) [Reserved]

(b)(1) NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA, and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary.

With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section 13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under section 13263 of the California Water Code.

(2) The MOA specifies how the process of 15 CFR 922.49 will be administered within State waters within the Sanctuary in coordination with the State permit program.

APPENDIX A TO SUBPART M OF PART 922 — MONTEREY BAY NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES [Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

Point ID Number	Latitude	Longitude
Seaward Boundary		
1	37.88163	-122.62788
2	37.66641	-122.75105
3	37.61622	-122.76937
4	37.57147	-122.80399
5	37.52988	-122.85988
6	37.50948	-122.90614
7	37.49418	-123.00770
8	37.50819	-123.09617
9	37.52001	-123.12879
10	37.45304	-123.14009
11	37.34316	-123.13170
12	37.23062	-123.10431
13	37.13021	-123.02864
14	37.06295	-122.91261
15	37.03509	-122.77639

16	36.92155	-122.80595
17	36.80632	-122.81564
18	36.69192	-122.80539
19	36.57938	-122.77416
20	36.47338	-122.72568
21	36.37242	-122.65789
22	36.27887	-122.57410
23	36.19571	-122.47699
24	36.12414	-122.36527
25	36.06864	-122.24438
26	36.02451	-122.11672
27	35.99596	-121.98232
28	35.98309	-121.84069
29	35.98157	-121.75634
30	35.92933	-121.71119
31	35.83773	-121.71922
32	35.72063	-121.71216
33	35.59497	-121.69030
34	35.55327	-121.63048
35	35.55485	-121.09803
36	37.59437	-122.52082
37	37.61367	-122.61673
38	37.76694	-122.65011
39	37.81760	-122.53048
Harbor Exclusions		
40	37.49414	-122.48483
41	37.49540	-122.48576
42	36.96082	-122.00175
43	36.96143	-122.00112
44	36.80684	-121.79145
45	36.80133	-121.79047
46	36.60837	-121.88970
47	36.60580	-121.88965

APPENDIX B TO SUBPART M OF PART 922 — ZONES WITHIN THE SANCTUARY WHERE OVERFLIGHTS BELOW 1000 FEET ARE PROHIBITED

The four zones are:

- (1) From mean high water out to three nautical miles (NM) between a line extending from Point Santa Cruz on a southwesterly heading of 220° and a line extending from 2.0 NM north of Pescadero Point on a southwesterly heading of 240°;
- (2) From mean high water out to three NM between a line extending from the Carmel River mouth on a westerly heading of 270 and a line extending due west along latitude 35.55488° off of Cambria;
- (3) From mean high water and within a five NM arc drawn from a center point at the end of Moss Landing Pier; and
- (4) Over the waters of Elkhorn Slough east of the Highway On bridge to Elkhorn Road.

APPENDIX C TO SUBPART M OF PART 922 - DREDGED MATERIAL DISPOSAL SITES WITHIN THE SANCTUARY [Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

Point ID Number	Latitude	Longitude
Santa Cruz Harbor / Twin Lakes Dredge Disposal Site		
1	36.95750	-122.00033
2	36.95750	-121.99250
3	36.95683	-121.99233
4	36.95683	-122.00050
SF-12 Dredge Disposal Site		
1	36.80206	-121.79207
2	36.80157	-121.79218
3	36.80217	-121.79325
4	36.80243	-121.79295
SF-14 Dredge Disposal Site (circle with 500 yard radius)		
1	36.77550	-122.59083
Monterey Harbor / Wharf II Dredge Disposal Site		
1	36.43630	-121.88941
2	36.60283	-121.88787
3	36.60091	-121.88826
4	36.60120	-121.88978

APPENDIX D TO SUBPART M OF PART 922 — DREDGED MATERIAL DISPOSAL SITES ADJACENT TO THE MONTEREY BAY NATIONAL MARINE SANCTUARY [Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

As of January 1, 1993, the U.S. Army Corps of Engineers operates the following dredged material disposal site adjacent to the Sanctuary off of the Golden Gate:

Point ID Number	Latitude	Longitude
1	37.76458	-122.56900
2	37.74963	-122.62281
3	37.74152	-122.61932
4	37.75677	-122.56482
5	37.76458	-122.56900

APPENDIX E TO SUBPART M OF PART 922 - MOTORIZED PERSONAL WATERCRAFT ZONES AND ACCESS ROUTES WITHIN THE SANCTUARY [Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

The four zones and access routes are:

(1) The approximately one [1.0] NM² area off Pillar Point Harbor from harbor launch ramps, through harbor entrance to the northern boundary of Zone One:

Point ID Number	Latitude	Longitude
1(flasher 5-second breakwater entrance light and horn located at	37.49333	-122.48500

the seaward end of the outer west breakwater)		
2(bell buoy)	37.48167	-122.48333
3	37.48000	-122.46667
4	37 29.6°	-122.46667

(2) The approximately five [5.0] NM² area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route southwest along a true bearing of approximately 196° (180° magnetic) to the whistle buoy at 36.93833N, 122.01000 W.

Zone Two is bounded by:

Point ID Number	Latitude	Longitude
1	36.91667	-122.03333
2	36.91667	-121.96667
3	36.94167	-121.96667
4	36.94167	-122.03333

(3) The approximately six [6.0] NM² area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route due west to the eastern boundary of Zone Three bounded by:

Point ID Number	Latitude	Longitude
1	36.83333°	-121.82167
2	36.83333	-121.84667
3	36.77833	-121.84667
4	36.77833	-121.81667
5(bell buoy)	36.79833	-121.80167
6	36.81500	-121.80333

(4) The approximately five [5.0] NM² area off of Monterey Harbor from harbor launch ramps to the seaward end of the U.S. Coast Guard Pier, and then along a 100 yard wide access route due north to the southern boundary of Zone Four bounded by:

Point ID Number	Latitude	Longitude
1	36.64500	-121.92333
2	36.61500	-121.87500
3	36.63833	-121.85500
4	36.66667	-121.90667

APPENDIX F TO SUBPART M OF PART 922 — DAVIDSON SEAMOUNT MANAGEMENT ZONE [Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

Point ID Number	Latitude	Longitude
1	35.90000	-123.00000
2	35.90000	-122.50000
3	35.50000	-122.50000
4	35.50000	-123.00000

END

**MONTEREY BAY NMS
PROPOSED REGULATIONS (STRIKE-OUT)**

PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. The regulations for MBNMS (15 CFR part 922, Subpart M) are amended to read as follows:

§ 922.130 Boundary

§ 922.131 Definitions

§ 922.132 Prohibited Or Otherwise Regulated Activities

§ 922.133 Permit Procedures and Criteria

§ 922.134 Notification and Review

Appendix A To Subpart M Of Part 922 — Monterey Bay National Marine Sanctuary

Boundary Coordinates

Appendix B To Subpart M Of Part 922 — Zones Within The Sanctuary Where Overflights

Below 1000 Feet Are Prohibited

Appendix C To Subpart M Of Part 922 - Dredged Material Disposal Sites Within The

Sanctuary

Appendix D To Subpart M Of Part 922 — Dredged Material Disposal Sites Adjacent To

The Monterey Bay National Marine Sanctuary

Appendix E To Subpart M Of Part 922 - Motorized Personal Watercraft Zones And Access

Routes Within The Sanctuary

Appendix F To Subpart M Of Part 922 — Davidson Seamount Management Zone

Subpart M—Monterey Bay National Marine Sanctuary

Section 922.130 Boundary.

§922.130 Boundary.

~~(a)~~ The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas.

~~(a)~~ The first area consists of an area of approximately 4,016~~24~~ square nautical miles (nm) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.

~~(b) The northern terminus of the Sanctuary boundary is located along the southern boundary of the Gulf of the Farallones National Marine Sanctuary (GFNMS), beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follow the GFNMS boundary and runs westward to a point approximately 29 nm offshore from Moss Beach in San Mateo County, 123°07'W. The Sanctuary boundary then extends southward in a series of arcs which generally follows the 500 fathom isobath to a point approximately 27 nm offshore of Cambria in San Luis Obispo County. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The Sanctuary boundary then extends shoreward eastward towards the shore until it intersects the Mean High-Water Line (MHWL) along the coast near Cambria. The landward Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. is defined by the mean high water line between the GFNMS and Cambria, exclusive of The shoreward Sanctuary boundary excludes a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbor, and Moss Landing Harbor, and Monterey harbors are all excluded from the Sanctuary boundary shoreward from the points listed in Appendix A, if respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included in the Sanctuary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve. is included within the Sanctuary boundary. The Exact boundary coordinates for the seaward boundary and harbor exclusions are listed provided in Appendix A to this subpart.~~

(b) The Davidson Seamount Management Zone (DSMZ) is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 sq. nm of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 nm off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the DSMZ boundary are provided in Appendix F to this subpart.

§922.131 Definitions.

In addition to those definitions found at 15 CFR §922.3, the following definitions apply to this subpart:

Attract or attracting means the conduct of any activity that lures or may lure ~~white sharks~~ any animal by using food, bait, chum, dyes, ~~decoys~~, acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, and surfers).

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to 15 CFR §922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron). Pneumatic, mechanical, electrical, hydraulic or explosive tools are, therefore, examples of what does not meet this definition.

Motorized personal watercraft (MPWC) means (1) any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the

conventional manner, where the operator stands or sits inside the vessel; (2) any vessel less than 20 feet in length overall and propelled by machinery and that has been exempted from compliance, with the U.S. Coast Guard's maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183 (except submarines; or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

Harmful matter means any substance, or combination of substances, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

Deserting means:

a) leaving a vessel aground or adrift:

(1) without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification;

(2) after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts; or

(3) when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or

b) leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Cruise ship means a vessel with 250 or more passenger berths for hire.

Introduced species means: (1) a species (including but not limited to any of its biological matter capable of propagation) that is non-native to the ecosystems protected by the Sanctuary; or (2) any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

The Davidson Seamount Management Zone means the area bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, and consists of approximately 585 square NM of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 NM off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the DSMZ boundary are provided in Appendix F to this subpart.

The Davidson Seamount Management Zone means the ocean waters and submerged lands thereunder bounded by coordinates West: 123.00000°W; East: 122.50000°W; North: 35.90000°N; South: 35.50000°N.

motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, surf jets, miniature speed boats, air boats, and hovercraft.

§922.132 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (e) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary except: jade may be collected (~~meaning removed~~) from the area bounded by the ~~35°55'20"~~ 35.92222 N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach), the ~~35°53'20"~~ 35.88889 N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and from the mean high tide line seaward to the 90-foot isobath (depth line) (the "authorized area") *provided that*:

(i) Only jade already loose from the submerged lands of the Sanctuary ~~seabed~~ may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined ~~in~~ at 15 CFR §922.131) to maneuver or lift the jade or scratch the surface of a stone as necessary to determine if it is jade;

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft) (see paragraph (a)(7) of this section) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii) of this section, any person may apply for a permit to collect such a loose piece by following the procedures in 15 CFR §922.133.

(2)

(i) ~~Discharging or depositing, from within or into the boundary of the Sanctuary, other than from a cruise ship, any material or other matter, except:~~

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations within the Sanctuary, provided that such discharge or deposit is during the conduct of traditional fishing operations within the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322, et seq. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge of untreated sewage;

(C) Biodegradable Water generated by routine vessel operations (e.g., cooling water, deck wash down, vessel engine cooling water, vessel generator cooling water, anchor wash, clean bilge water (meaning not containing detectable levels of harmful matter as defined), and or graywater as defined by section 312 of the FWPCA that is biodegradable excluding oily wastes from bilge pumping;

(D) Vessel eEngine or generator exhaust; or

(E) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation (January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993. Authorized disposal sites within the Sanctuary are described in Appendix C.

(ii) Discharging or depositing, from within or into the Sanctuary, any material or other matter from a cruise ship except vessel engine cooling water, generator cooling water or anchor wash.

(iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in ~~A~~ppendix ~~DB~~ to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(3) ~~Possessing, m~~Moving, removing, or injuring, or attempting to ~~possess, move, remove or injure~~, a Sanctuary historical resource. This prohibition does not apply to ~~possession, moving, removing or injury~~ resulting incidentally from kelp harvesting, aquaculture or traditional fishing operations.

(4) Drilling into, dredging or otherwise altering the ~~seabed-submerged lands~~ of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the ~~seabed-submerged lands~~ of the Sanctuary except as ~~an incidental to and necessary to result of~~:

~~(i) Anchoring vessels;~~

~~(ii) Conduct Aquaculture, kelp harvesting or traditional fishing operations;~~

~~(ii) Anchor a vessel;~~

~~(iii) Conduct aquaculture or kelp harvesting;~~

~~(iv) Install an authorization of navigational aids;~~

~~(iv) Conduct h~~Harbor maintenance in ~~the an~~ areas necessarily associated with ~~a~~ Federal Projects in existence on January 1, 1993, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;

~~(vi) Construction, repair, replace,ment or rehabilitation of a docks or piers; or~~

~~(vii) Collection of jade pursuant to paragraph (a)(1) of this section, provided that there is no constructing, placing, or abandoning any structure, material, or other matter on the seabed submerged lands of the Sanctuary.~~

The exceptions listed in subparagraphs (a)(4)(ii) through (a)(4)(vii) of this section do not apply in the Davidson Seamount Management Zone

(5) Taking any marine mammal, sea turtle or seabird ~~within~~ or above the Sanctuary, except as ~~expressly permitted authorized by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 et seq., or any regulations, as amended, promulgated under the MMPA, ESA, or MBTA.~~

(6) Flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1000 feet above any of the four zones within the Sanctuary described in ~~A~~ppendix ~~BC~~ to this subpart.

(7) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in ~~Appendix E~~ to this subpart.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), ~~except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, sea turtle or seabird, taken except as authorized in violation of regulations, as amended, promulgated under the MMPA, ESA, or MBTA, under any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.~~

(9) ~~Deserting a vessel aground, at anchor, or adrift in the Sanctuary.~~

(10) ~~Leaving harmful matter aboard a grounded or deserted vessel within the Sanctuary.~~

(11)

~~(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to fishing below 3000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).~~

~~(ii) Possessing any Sanctuary resource the source of which is more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to possession of fish resulting from fishing below 3000 feet within the DSMZ, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States and in the Western Pacific).~~

(12)

~~Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.~~

~~(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.~~

~~(13) Attracting any white shark within that part of the Sanctuary, out to the seaward limit of State waters. For the purposes of this prohibition, the seaward limit of State waters is a line three nautical miles distant from the coastline of the State, where the coastline is the line of ordinary low water along the portion of the coast in direct contact with the open sea. The coastline for Monterey Bay, which is inland waters, is the straight line marking the seaward limit of the Bay, determined by connecting the following two points: 36°57'6" N, 122°01'45" W and 36°38'16" N, 121°56'3" W.~~

~~(14) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.~~

(b) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities necessary to respond to an emergencies threatening life, property or the environment.

(c)(1) All Department of Defense activities ~~shall~~ must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The

prohibitions in paragraphs (a) (2) through (129) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940). New activities may be exempted from the prohibitions in paragraphs (a) (2) through (129) of this section by the Director after consultation between the Director and the Department of Defense.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to ~~spills discharges, deposits, and groundings, caused by the a Department of Defense activity, the Department of Defense, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.~~ the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, paragraphs (a) (2) and (8) of this section, and paragraph through (a)(110) and (a)(13) of this section, do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR §§922.48 and 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a) (2) through (a)(88) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR §922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under 15 CFR §§922.48 and 922.133 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to 15 CFR §922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

§922.133 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by sec. §922.132(a)(1) as it pertains to jade collection in the Sanctuary, and sec. §922.132(a) (2) through (118), or sec. (a)(13), and §922.132(a) (10); if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and 15 CFR 922.48.

~~(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940.~~

~~(be) The Director, at his or her sole discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by sec. §922.132(a)(1) as it pertains to jade collection in the Sanctuary, sec. §922.132(a) (2) through (118), or sec. (a)(13) and §922.132(a)(10) if the Director finds the activity will have at most short-term only and negligible short-term adverse effects on Sanctuary resources and qualities and will:~~

- ~~(1) Is further research related designed to further understanding of to Sanctuary resources and qualities;~~
- ~~(2) Will further the educational, natural or historical resource value of the Sanctuary;~~
- ~~(3) Will further salvage or recovery operations within or near the Sanctuary in connection with a recent air or marine casualty;~~
- ~~(4) Will allow the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove area under §922.132(a)(1)(iv); assist in managing the Sanctuary;~~
- ~~(5) Will or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California; or~~
- ~~(6) Will allow removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove Area under sec. 922.132(a)(1)(i+v).~~

~~(c). In deciding whether to issue a permit, the Director shall consider such factors as:~~

- ~~(1) Will the activity be conducted by an applicant that is the professionally qualified to conduct and complete the activity;~~
- ~~(2) Will the activity be conducted by an applicant with adequate eations and financial resources available ability of the applicant as related to the proposed conduct and complete the activity;~~
- ~~(3) the duration ofIs the activity proposed for no longer than necessary to achieve its stated purpose;~~
- ~~(4) Must the activity be conducted within the Sanctuary;~~
- ~~(5) Will the activity be conducted using and the duration of its effects; the appropriateness of the methods and procedures that are appropriate to achieve the goals of the proposed by the applicant for the conduct of the activity, especially in relation to the potential effects of the proposed activity on ; the extend to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities;~~
- ~~(6) Will the activity be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary, or cumulative effects of the activity, and the duration of such effects;~~
- ~~(7) Will the activity be conducted in a manner compatible with the value of the Sanctuary as a source of recreation and as a source of educational and scientific information, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary and the duration of such effects; and~~
- ~~(8) Does the reasonably expected end value of the activity to the furtherance of the Sanctuary goals and objectives outweigh any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity.~~

~~the cumulative effects of the activity; and the end value of the activity. For jade collection, preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes. In addition, the Director may consider such other factors as he or she deems appropriate.~~

(d) Applications.

(1) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries~~Ocean and Coastal Resource Management~~; ATTN: ~~Manager~~Superintendent
~~Superintendent~~, Monterey Bay National Marine Sanctuary, 299 Foam Street, ~~Suite D~~, uite D
Monterey, CA 93940.

~~(2) In addition to the information listed in 15 CFR 922.48(b), all applications must include information the Director needs to make the findings in paragraph (b) of this section and information to be considered by the Director pursuant to paragraph (c) of this section.~~

~~(c) In addition to any other terms and conditions that the Director deems appropriate, a permit issued pursuant to this section must require that the permittee agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.~~

~~(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.~~

~~(e) The Director may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.~~

~~(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.~~

§922.134 Notification and review.

(a) [Reserved]

(b)(1) NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section §13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under section §13263 of the California Water Code.

(2) The MOA specifies how the process of 15 CFR §922.49 will be administered within State waters within the Sanctuary in coordination with the State permit program.

Appendix A to Subpart M of Part 922—Monterey Bay National Marine Sanctuary Boundary Coordinates

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

<u>Point ID Number</u>	<u>Latitude</u>	<u>Longitude</u>
<u>Seaward Boundary</u>		

<u>1</u>	<u>37.88163</u>	<u>-122.62788</u>
<u>2</u>	<u>37.66641</u>	<u>-122.75105</u>
<u>3</u>	<u>37.61622</u>	<u>-122.76937</u>
<u>4</u>	<u>37.57147</u>	<u>-122.80399</u>
<u>5</u>	<u>37.52988</u>	<u>-122.85988</u>
<u>6</u>	<u>37.50948</u>	<u>-122.90614</u>
<u>7</u>	<u>37.49418</u>	<u>-123.00770</u>
<u>8</u>	<u>37.50819</u>	<u>-123.09617</u>
<u>9</u>	<u>37.52001</u>	<u>-123.12879</u>
<u>10</u>	<u>37.45304</u>	<u>-123.14009</u>
<u>11</u>	<u>37.34316</u>	<u>-123.13170</u>
<u>12</u>	<u>37.23062</u>	<u>-123.10431</u>
<u>13</u>	<u>37.13021</u>	<u>-123.02864</u>
<u>14</u>	<u>37.06295</u>	<u>-122.91261</u>
<u>15</u>	<u>37.03509</u>	<u>-122.77639</u>
<u>16</u>	<u>36.92155</u>	<u>-122.80595</u>
<u>17</u>	<u>36.80632</u>	<u>-122.81564</u>
<u>18</u>	<u>36.69192</u>	<u>-122.80539</u>
<u>19</u>	<u>36.57938</u>	<u>-122.77416</u>
<u>20</u>	<u>36.47338</u>	<u>-122.72568</u>
<u>21</u>	<u>36.37242</u>	<u>-122.65789</u>
<u>22</u>	<u>36.27887</u>	<u>-122.57410</u>
<u>23</u>	<u>36.19571</u>	<u>-122.47699</u>
<u>24</u>	<u>36.12414</u>	<u>-122.36527</u>
<u>25</u>	<u>36.06864</u>	<u>-122.24438</u>
<u>26</u>	<u>36.02451</u>	<u>-122.11672</u>
<u>27</u>	<u>35.99596</u>	<u>-121.98232</u>
<u>28</u>	<u>35.98309</u>	<u>-121.84069</u>
<u>29</u>	<u>35.98157</u>	<u>-121.75634</u>
<u>30</u>	<u>35.92933</u>	<u>-121.71119</u>
<u>31</u>	<u>35.83773</u>	<u>-121.71922</u>
<u>32</u>	<u>35.72063</u>	<u>-121.71216</u>
<u>33</u>	<u>35.59497</u>	<u>-121.69030</u>
<u>34</u>	<u>35.55327</u>	<u>-121.63048</u>
<u>35</u>	<u>35.55485</u>	<u>-121.09803</u>
<u>36</u>	<u>37.59437</u>	<u>-122.52082</u>
<u>37</u>	<u>37.61367</u>	<u>-122.61673</u>
<u>38</u>	<u>37.76694</u>	<u>-122.65011</u>
<u>39</u>	<u>37.81760</u>	<u>-122.53048</u>
<u>Harbor Exclusions</u>		
<u>40</u>	<u>37.49414</u>	<u>-122.48483</u>
<u>41</u>	<u>37.49540</u>	<u>-122.48576</u>
<u>42</u>	<u>36.96082</u>	<u>-122.00175</u>

<u>43</u>	<u>36.96143</u>	<u>-122.00112</u>
<u>44</u>	<u>36.80684</u>	<u>-121.79145</u>
<u>45</u>	<u>36.80133</u>	<u>-121.79047</u>
<u>46</u>	<u>36.60837</u>	<u>-121.88970</u>
<u>47</u>	<u>36.60580</u>	<u>-121.88965</u>

[Appendix based on North American datum of 1983.]

Point	Latitude	Longitude
1.....	37°52'56.09055"	122°37'39.12564"
2.....	37°39'59.06176"	122°45'3.79307"
3.....	37°36'58.39164"	122°46'9.73871"
4.....	37°34'17.30224"	122°48'14.38141"
5.....	37°31'47.55649"	122°51'35.56769"
6.....	37°30'34.11030"	122°54'22.12170"
7.....	37°29'39.05866"	123°00'27.70792"
8.....	37°30'29.47603"	123°05'46.22767"
9.....	37°31'17.66945"	123°07'47.63363"
10.....	37°27'10.93594"	123°08'24.32210"
11.....	37°20'35.37491"	123°07'54.12763"
12.....	37°13'50.21805"	123°06'15.50600"
13.....	37°07'48.76810"	123°01'43.10994"
14.....	37°03'46.60999"	122°54'45.39513"
15.....	37°02'06.30955"	122°46'35.02125"
16.....	36°55'17.56782"	122°48'21.41121"
17.....	36°48'22.74244"	122°48'56.29007"
18.....	36°41'30.91516"	122°48'19.40739"
19.....	36°34'45.76070"	122°46'26.96772"
20.....	36°28'24.18076"	122°43'32.43527"
21.....	36°22'20.70312"	122°39'28.42026"
22.....	36°16'43.93588"	122°34'26.77255"
23.....	36°11'44.53838"	122°28'37.16141"
24.....	36°07'26.88988"	122°21'54.97541"
25.....	36°04'07.08898"	122°14'39.75924"
26.....	36°01'28.22233"	122°07'00.19068"
27.....	35°59'45.46381"	121°58'56.36189"
28.....	35°58'59.12170"	121°50'26.47931"
29.....	35°58'53.63866"	121°45'22.82363"
30.....	35°55'45.60623"	121°42'40.28540"
31.....	35°50'15.84256"	121°43'09.20193"
32.....	35°43'14.26690"	121°42'43.79121"
33.....	35°35'41.88635"	121°41'25.07414"
34.....	35°33'11.75999"	121°37'49.74192"
35.....	35°33'17.45869"	121°05'52.89891"
36.....	37°35'39.73180"	122°31'14.96033"
37.....	37°36'49.21739"	122°37'00.22577"
38.....	37°46'00.98983"	122°39'00.40466"
39.....	37°49'05.69080"	122°31'46.30542"

Appendix B to Subpart M of Part 922—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

The four zones are:

- (1) From mean high water out to three nautical miles (NM) between a line extending from Point Santa Cruz on a southwesterly heading of 220° and a line extending from 2.0 NM north of Pescadero Point on a southwesterly heading of 240°;
- (2) From mean high water out to three NM between a line extending from the Carmel River mouth on a westerly heading of 270° and a line extending due west along latitude 35°33'17.5612" off of Cambria;
- (3) From mean high water and within a five NM arc drawn from a center point at the end of Moss Landing Pier; and
- (4) Over the waters of Elkhorn Slough east of the Highway On bridge to Elkhorn Road.

APPENDIX C TO SUBPART M OF PART 922 – DREDGED MATERIAL DISPOSAL SITES WITHIN THE MONTEREY BAY NATIONAL MARINE SANCTUARY

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

<u>Point ID Number</u>	<u>Latitude</u>	<u>Longitude</u>
<u>Santa Cruz Harbor / Twin Lakes Dredge Disposal Site</u>		
<u>1</u>	<u>36.95750</u>	<u>-122.00033</u>
<u>2</u>	<u>36.95750</u>	<u>-121.99250</u>
<u>3</u>	<u>36.95683</u>	<u>-121.99233</u>
<u>4</u>	<u>36.95683</u>	<u>-122.00050</u>
<u>SF-12 Dredge Disposal Site</u>		
<u>1</u>	<u>36.80206</u>	<u>-121.79207</u>
<u>2</u>	<u>36.80157</u>	<u>-121.79218</u>
<u>3</u>	<u>36.80217</u>	<u>-121.79325</u>
<u>4</u>	<u>36.80243</u>	<u>-121.79295</u>
<u>SF-14 Dredge Disposal Site (circle with 500 yard radius)</u>		
<u>1</u>	<u>36.77550</u>	<u>-122.59083</u>
<u>Monterey Harbor / Wharf II Dredge Disposal Site</u>		
<u>1</u>	<u>36.43630</u>	<u>-121.88941</u>
<u>2</u>	<u>36.60283</u>	<u>-121.88787</u>
<u>3</u>	<u>36.60091</u>	<u>-121.88826</u>
<u>4</u>	<u>36.60120</u>	<u>-121.88978</u>

APPENDIX DB TO SUBPART M OF PART 922—DREDGED MATERIAL DISPOSAL SITES ADJACENT TO THE MONTEREY BAY NATIONAL MARINE SANCTUARY

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

As of January 1, 1993, the U.S. Army Corps of Engineers operates the following dredged material disposal site adjacent to the Sanctuary off of the Golden Gate:

Point ID Number	Latitude	Longitude
1	37.76458	-122.56900
2	37.74963	-122.62281
3	37.74152	-122.61932
4	37.75677	-122.56482
5	37.76458	-122.56900

(Appendix based on North American Datum of 1983.)

As of January 1, 1993, the U.S. Army Corps of Engineers operates the following dredged material disposal site adjacent to the Sanctuary off of the Golden Gate:

Point	Latitude	Longitude
1.....	37°45.875'	122°34.140'
2.....	37°44.978'	122°37.369'
3.....	37°44.491'	122°37.159'
4.....	37°45.406'	122°33.889'
5.....	37°45.875'	122°34.140'

In addition, the U.S. Environmental Protection Agency, as of January 1, 1993, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary and within one of three study areas described in 57 FR 43310, Sept. 18, 1992. When that disposal site is authorized, this appendix will be updated to incorporate its precise location.

APPENDIX E TO SUBPART M OF PART 922 - MOTORIZED PERSONAL WATERCRAFT ZONES AND ACCESS ROUTES WITHIN THE SANCTUARY [Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

Appendix D to Subpart M of Part 922—Zones and Access Routes Within the Sanctuary Where the Operation of Motorized Personal Watercraft Is Allowed

The four zones and access routes are:

(1) The approximately one [1.0] NM² area off Pillar Point Harbor from harbor launch ramps, through harbor entrance to the northern boundary of Zone One:

Point ID Number	Latitude	Longitude
1(flasher 5-second breakwater entrance light and horn located at the seaward end of the outer west breakwater)	37.49333	-122.48500

<u>2(bell buoy)</u>	<u>37.48167</u>	<u>-122.48333</u>
<u>3</u>	<u>37.48000</u>	<u>-122.46667</u>
<u>4</u>	<u>37 29.6°</u>	<u>-122.46667</u>

(2) The approximately five [5.0] NM2 area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route southwest along a true bearing of approximately 196° (180° magnetic) to the whistle buoy at 36.93833N, 122.01000 W. Zone Two is bounded by:

<u>Point ID Number</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>36.91667</u>	<u>-122.03333</u>
<u>2</u>	<u>36.91667</u>	<u>-121.96667</u>
<u>3</u>	<u>36.94167</u>	<u>-121.96667</u>
<u>4</u>	<u>36.94167</u>	<u>-122.03333</u>

(3) The approximately six [6.0] NM2 area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route due west to the eastern boundary of Zone Three bounded by:

<u>Point ID Number</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>36.83333°</u>	<u>-121.82167</u>
<u>2</u>	<u>36.83333</u>	<u>-121.84667</u>
<u>3</u>	<u>36.77833</u>	<u>-121.84667</u>
<u>4</u>	<u>36.77833</u>	<u>-121.81667</u>
<u>5(bell buoy)</u>	<u>36.79833</u>	<u>-121.80167</u>
<u>6</u>	<u>36.81500</u>	<u>-121.80333</u>

(4) The approximately five [5.0] NM2 area off of Monterey Harbor from harbor launch ramps to the seaward end of the U.S. Coast Guard Pier, and then along a 100 yard wide access route due north to the southern boundary of Zone Four bounded by:

<u>Point ID Number</u>	<u>Latitude</u>	<u>Longitude</u>
<u>1</u>	<u>36.64500</u>	<u>-121.92333</u>
<u>2</u>	<u>36.61500</u>	<u>-121.87500</u>
<u>3</u>	<u>36.63833</u>	<u>-121.85500</u>
<u>4</u>	<u>36.66667</u>	<u>-121.90667</u>

APPENDIX F TO SUBPART M OF PART 922 — DAVIDSON SEAMOUNT MANAGEMENT ZONE [Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

<u>Point ID Number</u>	<u>Latitude</u>	<u>Longitude</u>
<u>40</u>	<u>35.90000</u>	<u>-123.00000</u>
<u>41</u>	<u>35.90000</u>	<u>-122.50000</u>
<u>42</u>	<u>35.50000</u>	<u>-122.50000</u>
<u>43</u>	<u>35.50000</u>	<u>-123.00000</u>

END

The four zones and access routes are:

(1) The approximately one [1.0] NM2 area off Pillar Point Harbor from harbor launch ramps, through harbor entrance to the northern boundary of Zone One bounded by (a) 37°29.6' N (flashing 5-second breakwater entrance light and horn located at the seaward end of the outer west

breakwater), 122°29.1' W; (b) 37°28.9' N (bell buoy), 122°29.0' W; (c) 37°28.8' N, 122°28' W; and (d) 37°29.6' N, 122°28' W;

(2) The approximately five [5.0] NM² area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route southwest along a true bearing of approximately 196° (180° magnetic) to the whistle buoy at 36°56.3' N, 122°00.6' W. Zone Two is bounded by (a) 36°55' N, 122°02' W; (b) 36°55' N, 121°58' W; (c) 36°56.5' N, 121°58' W; and (d) 36°56.5' N, 122°02' W;

(3) The approximately six [6.0] NM² area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route due west to the eastern boundary of Zone Three bounded by (a) 36°50' N, 121°49.3' W; (b) 36°50' N, 121°50.8' W; (c) 36°46.7' N, 121°50.8' W; (d) 36°46.7' N, 121°49' W; (e) 36°47.9' N (bell buoy), 121°48.1' W; and (f) 36°48.9' N, 121°48.2' W; and

(4) The approximately five [5.0] NM² area off of Monterey Harbor from harbor launch ramps to the seaward end of the U.S. Coast Guard Pier, and then along a 100 yard wide access route due north to the southern boundary of Zone Four bounded by (a) 36°38.7' N, 121°55.4' W; (b) 36°36.9' N, 121°52.5' W; (c) 36°38.3' N, 121°51.3' W; and (d) 36°40' N, 121°54.4' W.

[60 FR 66877, Dec. 27, 1995, as amended at 61 FR 14964, Apr. 4, 1996]

**MONTEREY BAY NMS
PROPOSED DESIG. DOC. (STRIKE-OUT)**

**PROPOSED REVISED DESIGNATION DOCUMENT FOR THE MONTEREY BAY
NATIONAL MARINE SANCTUARY**

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. §§ 1431 et seq., Monterey Bay and its surrounding waters offshore central California, and the submerged lands under Monterey Bay and its surrounding waters, as described in Article II, are hereby designated as the Monterey Bay National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of the Monterey Bay National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the types that either are to be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Area

The Monterey Bay National Marine Sanctuary (the "Sanctuary") consists of two separate areas. (a) The first area consists of an area boundary encompass a total of approximately 4,016,604 4,024 square nautical miles (NM) (approximately 13,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California. The northern terminus of the boundary is located along the southern boundary of the Gulf of Farallones National Marine Sanctuary (GFNMS) beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follows the GFNMS and runs westward to a point approximately 123.11667 W 123deg.07'W 29 NM offshore from Moss Beach in San Mateo County. The Sanctuary boundary then extends southward in a series of arcs, which generally follows the 500 fathom isobath. At approximately 37.05000 N 37°03'N, the boundary arcs south to 122.41667 W, 36.16667 N 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121.68333 W, 35.55000 N 121°41'W, 35°33'N, due west, to a point 27 NM offshore of Cambria, in San Luis Obispo County. The Sanctuary boundary then extends shoreward eastward towards shore until it intersects the Mean High Water Line (MHWL) along the coast near Cambria. The Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. The landward shoreward Sanctuary boundary is defined by the mean high water line between the Gulf of Farallones National Marine Sanctuary and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbors, and Moss Landing Harbor, and Monterey harbors are all excluded from the Sanctuary boundary shoreward of the points listed in Appendix A to the site regulations, I, from their respective International Collision at Sea regulation (Colreg) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge, and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included within the Sanctuary boundary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve. Exact coordinates for the seaward boundary and harbor exclusions are provided in Appendix A of the site regulations.

(b) The Davidson Seamount Management Zone (DSMZ) is also part of the Sanctuary. This area, bounded by a rectangle centered on the top of the Davidson Seamount, consists of approximately

585 square NM of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 NM off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the DSMZ boundary are provided in Appendix F to the site regulations.
~~The Davidson Seamount Management Zone is included within the Sanctuary boundary. This area encompasses approximately 585 square nautical miles of ocean waters and the submerged lands thereunder. This portion of the Sanctuary is located approximately 70 nautical miles off the coast of San Simeon, California. Appendix I to this Designation Document sets forth the precise Sanctuary boundary.~~

Article III. Characteristics of the Area That Give It Particular Value

The Monterey Bay area is characterized by a combination of oceanic conditions and undersea topography that provides for a highly productive ecosystem and a wide variety of marine habitat. The area is characterized by a narrow continental shelf fringed by a variety of coastal types. The Monterey Submarine Canyon is unique in its size, configuration, and proximity to shore. This canyon system provides habitat for pelagic communities and, along with other distinct bathymetric features, may modify currents and act to enrich local waters through strong seasonal upwelling. Monterey Bay itself is a rare geological feature, as it is one of the few large embayments along the Pacific coast.

The Monterey Bay area has a highly diverse floral and faunal component. Algal diversity is extremely high and the concentrations of pinnipeds, whales, otters and some seabird species is outstanding. The fish stocks, particularly in Monterey Bay, are abundant and the variety of crustaceans and other invertebrates is high.

In addition there are many direct and indirect human uses of the area. The most important economic activity directly dependent on the resources is commercial fishing, which has played an important role in the history of Monterey Bay and continues to be of great economic value.

The diverse resources of the Monterey Bay area are enjoyed by the residents of this area as well as the numerous visitors. The population of Monterey and Santa Cruz counties is rapidly expanding and is based in large part on the attractiveness of the area's natural beauty. The high water quality and the resulting variety of biota and their proximity to shore is one of the prime reasons for the international renown of the area as a prime tourist location. The quality and abundance of the natural resources has attracted ~~man~~ human beings from the earliest prehistoric times to the present and as a result the area contains significant historical, e.g., archaeological and paleontological, resources, such as Costanoan Indian midden deposits, aboriginal remains, and sunken ships and aircraft.

The biological and physical characteristics of the Monterey Bay area combine to provide outstanding opportunities for scientific research on many aspects of marine ecosystems. The diverse habitats are readily accessible to researchers. Twenty-six ~~thirteen~~ major research and education facilities are found within the Monterey Bay area. These institutions are exceptional resources with a long history of research and large databases possessing a considerable amount of baseline information on the Bay and its resources. Extensive marine and coastal education and interpretive efforts complement Monterey Bay's many research activities. For example, the Monterey Bay Aquarium has attracted millions of visitors who have experienced the interpretive exhibits of the marine environment. Point Lobos Ecological Reserve, Elkhorn Slough National Estuarine Research Reserve, Long Marine Laboratory and Año Nuevo State Reserve all have excellent docent programs serving the public, and marine related programs for school groups and teachers.

As to Davidson Seamount, it is located offshore of California, seventy-five miles southwest of Monterey, due west of San Simeon, and is one of the largest known seamounts in U.S. waters. Davidson Seamount is twenty-six miles long and eight miles wide. From base to crest, Davidson

Seamount is 7,480 feet tall; yet still 4,101 feet below the sea surface. Davidson Seamount has an atypical seamount shape, having northeast-trending ridges created by a type of volcanism only recently described. It last erupted about 12 million years ago. This large geographic feature was the first underwater formation to be characterized as a “seamount” and was named after the Coast and Geodetic Survey (forerunner to the National Ocean Service) scientist George Davidson. Davidson Seamount’s geographical importance is due to its location in the California Current, which likely provides a larger flux of carbon (food) to the sessile organisms on the seamount surface relative to a majority of other seamounts in the Pacific and may have unique links to the nearby Partington and Monterey submarine canyons.

The surface water habitat of the Davidson Seamount hosts a variety of seabirds, marine mammals, and pelagic fishes, e.g., albatrosses, shearwaters, sperm whales, killer whales, albacore tuna, and ocean sunfish. Organisms in the midwater habitat have a patchy distribution, e.g., jellies and swimming worms, with marine snow, organic matter that continually “rains” down from the sea surface, providing an important food source for deep-sea animals. The seamount crest habitat is the most diverse of habitats in the Davidson Seamount area, including large gorgonian coral (e.g., Paragorgia sp.) forests, vast sponge fields (many undescribed species), crabs, deep-sea fishes, shrimp, and basket stars. The seamount slope habitat is composed of cobble and rocky areas interspersed with areas of ash and sediment, and hosts a diverse assemblage of sessile invertebrates and rare deep-sea fishes. The seamount base habitat is the interface between rocky outcrops and the flat, deep soft bottom habitat.

Davidson Seamount is home to previously undiscovered species and species assemblages, such as large patches of corals and sponges, where there is an opportunity to discover unique associations between species and other ecological processes. The high biological diversity of these assemblages has not been found on other central California seamounts. Davidson Seamount’s importance for conservation revolves around the endemism of seamount species, potential future harvest damage to coral and sponge assemblages, and the low resilience of these species. Abundant and large, fragile species (e.g., corals greater than eight feet tall, and at least 200 years old, as well as vast fields of sponges) and an apparently physically undisturbed seafloor appear relatively pristine. Research cruises to the Davidson Seamount in the early 2000s have captivated the imagination of the public through international news, television productions, a new NOAA visitor center film, and popular websites. The well-developed education initiatives of the National Marine Sanctuary Program, one of the few NOAA programs mandated to develop education programs, provides an opportunity to educate the public about seamounts as well as cold water corals and sponges. This is a critical advantage of Davidson Seamount designation, as few other sanctuaries include deep-sea corals and seamounts, a necessity in conservation and addressing new public interest in these issues.

The 1992 Final Environmental Impact Statement/Management Plan [and 2006 Draft Environmental Impact Statement/Management Plan] provides more detail on the characteristics of the Monterey Bay and Davidson Seamount area that give it particular value.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the ~~area~~Sanctuary:

- a. Exploring for, developing or producing oil, gas or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores, or any other solid material or other matter

- of commercial value) within the Sanctuary;
- b. Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except dredged material deposited at disposal sites authorized prior to the effective date of Sanctuary designation, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on the effective date of Sanctuary designation;
- c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except dredged material deposited at the authorized disposal sites described in ~~Appendix H of this Designation Document~~ D to the site regulations, provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval;
- d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying, or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy, or cause the loss of, a marine mammal, sea turtle, seabird, historical resource, or other Sanctuary resource;
- e. Drilling into, dredging, or otherwise altering the ~~seabed-submerged lands~~ of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the ~~seabed-submerged lands~~ of the Sanctuary;
- f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected, or harvested, that, if it had been found with the Sanctuary, would be a Sanctuary resource;
- g. Possessing any Sanctuary historical resource;
- h. Flying a motorized aircraft above the Sanctuary;
- i. Operating a vessel (i.e., water craft of any description) ~~in-within~~ within the Sanctuary;
- j. Aquaculture or kelp harvesting within the Sanctuary; ~~and~~
- k. Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.
- l. Introducing or otherwise releasing from within or into the Sanctuary an introduced species.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) the exploration for, development of, or production of oil, gas, or minerals within the Sanctuary except for limited, small-scale jade collection in the Jade Cove area of the Sanctuary [defined as the area bounded by the ~~35.92222 N 35.92222 N 35°55'20" N~~ latitude parallel (coastal reference point:

beach access stairway at South Sand Dollar Beach), the 35.88889 N 35°53'20"N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and the mean high tide line seaward to the 90-foot isobath (depth line)]; (2) the discharge of primary-treated sewage (except for regulation, pursuant to section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alterations of to this Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and Governor of the State of California, and approval by the Secretary of Commerce or designee.

~~**Appendix I. Monterey Bay National Marine Sanctuary Boundary Coordinates.** (Appendix based on North American Datum of 1983.) Approximately 4,604 4,024 Square Nautical Miles.)~~

Point ID Number	Latitude	Longitude
<u>Seaward Boundary</u>		
1	37.88163	-122.62788
2	37.66641	-122.75105
3	37.61622	-122.76937
4	37.57147	-122.80399
5	37.52988	-122.85988
6	37.50948	-122.90614
7	37.49418	-123.00770
8	37.50819	-123.09617
9	37.52001	-123.12879
10	37.45304	-123.14009
11	37.34316	-123.13170
12	37.23062	-123.10431
13	37.13021	-123.02864
14	37.06295	-122.91261
15	37.03509	-122.77639
16	36.92155	-122.80595
17	36.80632	-122.81564
18	36.69192	-122.80539
19	36.57938	-122.77416
20	36.47338	-122.72568
21	36.37242	-122.65789
22	36.27887	-122.57410
23	36.19571	-122.47699
24	36.12414	-122.36527
25	36.06864	-122.24438

26	36.02451	-122.11672
27	35.99596	-121.98232
28	35.98309	-121.84069
29	35.98157	-121.75634
30	35.92933	-121.71119
31	35.83773	-121.71922
32	35.72063	-121.71216
33	35.59497	-121.69030
34	35.55327	-121.63048
35	35.55485	-121.09803
36	37.59437	-122.52082
37	37.61367	-122.61673
38	37.76694	-122.65011
39	37.81760	-122.53048
<u>Davidson Seamount</u>		
40	<u>35.90000</u>	<u>-123.00000</u>
41	<u>35.90000</u>	<u>-122.50000</u>
42	<u>35.50000</u>	<u>-122.50000</u>
43	<u>35.50000</u>	<u>-123.00000</u>
<u>Harbor Exclusions</u>		
44	<u>37.49414</u>	<u>-122.48483</u>
45	<u>37.49540</u>	<u>-122.48576</u>
46	<u>36.96082</u>	<u>-122.00175</u>
47	<u>36.96143</u>	<u>-122.00112</u>
48	<u>36.80684</u>	<u>-121.79145</u>
49	<u>36.80133</u>	<u>-121.79047</u>
50	<u>36.60837</u>	<u>-121.88970</u>
51	<u>36.60580</u>	<u>-121.88965</u>

Appendix H. ~~Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary~~

[Appendix based on North American datum of 1983.]

As of the effective date of Sanctuary designation, the U.S. Army Corps of Engineers operates the following dredged material disposal sites adjacent to the Sanctuary off of the Golden Gate:

POINT	LATITUDE	LONGITUDE
1.....	37 45.875	122 34.140
2.....	37 44.978	122 37.369
3.....	37 44.491	122 37.159
4.....	37 45.406	122 33.889
5.....	37 45.875	122 34.140

In addition, the U.S. Environmental Protection Agency, as of the effective date of Sanctuary designation, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary. When that disposal site is authorized, this appendix will be updated to incorporate its precise location. The site will be located outside the Monterey Bay National Marine Sanctuary and any other existing national marine sanctuary and within one of the following Long-Term Management Strategy ocean study areas:

Study Area 3

The area described by the following points and a five-nautical-mile-wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1	37 25.850	123 21.926
2	37 25.793	123 21.928
3	37 25.733	123 21.919
4	37 25.688	123 21.910
5	37 25.630	123 21.896
6	37 25.566	123 21.875
7	37 25.513	123 21.859
8	37 25.451	123 21.820
9	37 25.394	123 21.779
10	37 25.334	123 21.698
11	37 25.268	123 21.595
12	37 25.180	123 21.456
13	37 25.139	123 21.358
14	37 25.057	123 21.240
15	37 24.992	123 21.167
16	37 24.878	123 21.093
17	37 24.765	123 21.034
18	37 24.700	123 20.975
19	37 24.602	123 20.872
20	37 24.521	123 20.783
21	37 24.449	123 20.682
22	37 24.391	123 20.599
23	37 24.342	123 20.503
24	37 24.298	123 20.421
25	37 24.245	123 20.340
26	37 24.193	123 20.238
27	37 24.147	123 20.134
28	37 24.103	123 20.031
29	37 24.062	123 19.934
30	37 24.017	123 19.839
31	37 23.952	123 19.662
32	37 23.906	123 19.517
33	37 23.855	123 19.396
34	37 23.790	123 19.278
35	37 23.728	123 19.125
36	37 23.644	123 18.968
37	37 23.562	123 18.836
38	37 23.482	123 18.707

Point	Latitude	Longitude
39	37 23.367	123 18.556
40	37 23.254	123 18.437
41	37 23.123	123 18.319
42	37 22.977	123 18.231
43	37 22.820	123 18.142
44	37 22.685	123 18.113
45	37 22.555	123 18.083
46	37 22.392	123 18.068
47	37 22.229	123 18.054
48	37 22.051	123 18.039
49	37 21.868	123 18.023
50	37 21.697	123 18.023
51	37 21.547	123 18.010
52	37 21.401	123 17.995
53	37 21.173	123 17.980
54	37 20.978	123 17.965
55	37 20.767	123 17.950
56	37 20.588	123 17.936
57	37 20.458	123 17.921
58	37 20.285	123 17.894
59	37 20.179	123 17.876
60	37 20.084	123 17.876
61	37 19.986	123 17.882
62	37 19.877	123 17.894
63	37 19.792	123 17.921
64	37 19.694	123 17.950
65	37 19.592	123 17.999
66	37 19.489	123 18.056
67	37 19.352	123 18.134
68	37 19.223	123 18.231
69	37 19.126	123 18.305
70	37 19.028	123 18.378
71	37 18.914	123 18.482
72	37 18.833	123 18.556
73	37 18.719	123 18.658
74	37 18.615	123 18.764
75	37 18.492	123 18.880
76	37 18.378	123 18.998
77	37 18.265	123 19.101
78	37 18.151	123 19.190
79	37 18.070	123 19.264
80	37 18.004	123 19.328
81	37 17.951	123 19.393
82	37 17.884	123 19.454
83	37 17.805	123 19.525
84	37 17.735	123 19.567
85	37 17.641	123 19.600
86	37 17.565	123 19.617
87	37 17.489	123 19.622
88	37 17.401	123 19.617

Point	Latitude	Longitude
89	37 17.352	123 19.606
90	37 17.305	123 19.583
91	37 17.272	123 19.558
92	37 17.248	123 19.514
93	37 25.802	123 0.617
94	37 25.850	123 21.926

The portion of the area described by the above points that lies within the Monterey Bay National Marine Sanctuary as described in Appendix I is excluded.

Study Area 4

The area described by the following points and a five nautical mile wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1	37 17.496	123 7.528
2	37 17.499	123 14.071
3	37 17.383	123 14.285
4	37 17.279	123 14.412
5	37 17.176	123 14.537
6	37 17.047	123 14.651
7	37 16.949	123 14.754
8	37 16.814	123 14.879
9	37 16.664	123 15.026
10	37 16.568	123 15.118
11	37 16.451	123 15.219
12	37 16.348	123 15.308
13	37 16.206	123 15.383
14	37 16.090	123 15.446
15	37 15.999	123 15.484
16	37 15.818	123 15.547
17	37 15.637	123 15.585
18	37 15.482	123 15.585
19	37 15.314	123 15.598
20	37 15.184	123 15.610
21	37 15.055	123 15.635
22	37 14.912	123 15.673
23	37 14.783	123 15.698
24	37 14.667	123 15.712
25	37 14.551	123 15.724
26	37 14.421	123 15.749
27	37 14.292	123 15.799
28	37 14.188	123 15.850
29	37 14.072	123 15.887
30	37 13.956	123 15.938
31	37 13.801	123 16.001
32	37 13.672	123 16.064
33	37 13.568	123 16.102
34	37 13.451	123 16.178
35	37 13.322	123 16.229

Point	Latitude	Longitude
36	37 13.193	123 16.266
37	37 13.063	123 16.279
38	37 12.973	123 16.304
39	37 12.830	123 16.330
40	37 12.650	123 16.355
41	37 12.456	123 16.367
42	37 12.275	123 16.367
43	37 12.122	123 16.349
44	37 11.987	123 16.312
45	37 11.853	123 16.269
46	37 11.754	123 16.216
47	37 11.631	123 16.142
48	37 11.537	123 16.067
49	37 11.473	123 15.994
50	37 11.420	123 15.930
51	37 11.380	123 15.872
52	37 11.344	123 15.825
53	37 11.279	123 15.698
54	37 11.227	123 15.547
55	37 11.188	123 15.421
56	37 11.150	123 15.269
57	37 11.116	123 15.124
58	37 11.098	123 14.980
59	37 11.085	123 14.828
60	37 11.072	123 14.626
61	37 11.059	123 14.437
62	37 11.052	123 14.359
63	37 11.033	123 14.259
64	37 11.004	123 14.158
65	37 10.978	123 14.078
66	37 10.942	123 13.978
67	37 10.890	123 13.877
68	37 10.847	123 13.802
69	37 10.804	123 13.727
70	37 10.712	123 13.614
71	37 10.648	123 13.531
72	37 10.564	123 13.439
73	37 10.508	123 13.370
74	37 10.502	123 7.508
75	37 17.496	123 7.528

Study Area 5

The area described by the following points and a five nautical mile wide zone west of the western boundary of that area:

Point	Latitude	Longitude
1	37 43.444	123 23.515
2	37 43.436	123 30.053
3	37 34.568	123 30.053
4	37 34.574	123 20.234

Point	Latitude	Longitude
5	37 34.661	123 19.507
6	37 34.725	123 19.376
7	37 34.725	123 19.376
8	37 35.031	123 19.452
9	37 35.935	123 19.081
10	37 36.769	123 18.542
11	37 37.698	123 17.788
12	37 37.765	123 17.743
13	37 37.789	123 17.827
14	37 37.838	123 17.911
15	37 37.887	123 17.996
16	37 37.937	123 18.105
17	37 37.998	123 18.202
18	37 38.085	123 18.359
19	37 38.183	123 18.529
20	37 38.270	123 18.674
21	37 38.356	123 18.832
22	37 38.455	123 18.977
23	37 38.554	123 19.134
24	37 38.640	123 19.255
25	37 38.726	123 19.364
26	37 38.825	123 19.497
27	37 38.911	123 19.606
28	37 38.985	123 19.703
29	37 39.071	123 19.811
30	37 39.195	123 19.981
31	37 39.318	123 20.138
32	37 39.404	123 20.272
33	37 39.478	123 20.356
34	37 39.565	123 20.465
35	37 39.664	123 20.574
36	37 39.762	123 20.695
37	37 39.840	123 20.791
38	37 39.992	123 20.889
39	37 39.997	123 20.986
40	37 40.095	123 21.095
41	37 40.181	123 21.192
42	37 40.268	123 21.288
43	37 40.330	123 21.373
44	37 40.416	123 21.470
45	37 40.516	123 21.563
46	37 40.616	123 21.667
47	37 40.736	123 21.785
48	37 40.860	123 21.906
49	37 40.983	123 22.027
50	37 41.107	123 22.148
51	37 41.230	123 22.269
52	37 41.378	123 22.390
53	37 41.515	123 22.499
54	37 41.669	123 22.607

Point	Latitude	Longitude
55	37 41.803	123 22.704
56	37 41.920	123 22.768
57	37 42.036	123 22.825
58	37 42.174	123 22.889
59	37 42.295	123 22.957
60	37 42.421	123 23.012
61	37 42.583	123 23.105
62	37 42.704	123 23.165
63	37 42.826	123 23.225
64	37 43.005	123 23.310
65	37 43.088	123 23.358
66	37 43.205	123 23.410
67	37 43.327	123 23.467
68	37 43.376	123 23.482
69	37 43.444	123 23.515

END OF DESIGNATION DOCUMENT